

IN THE MATTER OF	*	BEFORE THE
HOWARD J. HOFFBERG, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D30980	*	Case Number: 2221-0141B

\* \* \* \* \*

# **FINAL DECISION AND ORDER**

## **PROCEDURAL HISTORY**

Howard J. Hoffberg, M.D. was originally licensed to practice medicine in the State of Maryland on June 25, 1984, under license number D30980. On May 20, 2021, in the United States District Court for the District of Maryland, Dr. Hoffberg pled guilty to one count of Conspiracy to Violate Anti-Kickback statutes, in violation of 18 U.S.C. § 371. As of the date of this Order, Dr. Hoffberg has not been sentenced.

On August 25, 2021, the Office of the Attorney General filed with the Maryland Board of Physicians (the “Board”) a petition to suspend Dr. Hoffberg’s license to practice medicine (“the Petition”) and a proposed show cause order pursuant to section 14-404(b)(1) of the Maryland Medical Practice Act. The statute provides:

(1) On the filing of certified docket entries with the Board by the Office of the Attorney General, a disciplinary panel 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.

Md. Code Ann., Health Occupations Article (“Health Occ.”) § 14-404(b) (2014 Repl. Vol. & 2020 Supp.). Attached to the Petition were copies of the plea agreement and stipulation of facts.

On September 27, 2021, Dr. Hoffberg, through his counsel, acknowledged receipt of the Petition and stated that he had discussed the Petition with his client.

Having reviewed and considered the entire record in this case, Panel B issues this Final Decision and Order. COMAR 10.32.02.07H(1).

### FINDINGS OF FACT

Panel B finds the following:

1. On May 20, 2021, Dr. Hoffberg pled guilty to one count of Conspiracy to Violate Anti-Kickback statutes, in violation of 18 U.S.C. § 371, in the United States District Court for the District of Maryland.<sup>1</sup> *USA v. Hoffberg*, case number: 1:21-cr-00178-GLR-1.
2. The plea agreement contained a stipulation of facts, which included:

The Defendant, Howard Hoffberg, served as the Associate Medical Director and part-owner of Rosen-Hoffberg Rehabilitation and Pain Management (the "Practice").

\* \* \*

The Defendant is a doctor and was licensed to practice medicine in the State of Maryland. The Defendant was a Medicare provider and submitted claims to Medicare, which is a "health care benefit program," as defined in 18 U.S.C. § 24(b), and a "Federal health care program," as defined in 42 U.S.C. §

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<sup>1</sup> The elements of the offense, as contained in the plea agreement are, as follows:

- a. That two or more persons agreed to defraud the United States by agreeing to obstruct or interfere with one of the United States government's lawful functions by deceit, craft, trickery, or dishonest means, as charged in the Information, to wit, by soliciting or receiving remuneration (in the form of kickbacks or bribes) in return for ordering, or arranging for or recommending the purchasing of a good or item that could be paid for, in whole or in part, by a Federal health care program, in violation of 42 U.S.C. § 1320a-7b(b);
- b. That the Defendant was a party to or a member of that agreement;
- c. That the Defendant joined the agreement or conspiracy knowing of its objective to defraud the United States and intending to join together with at least one other conspirator to achieve that objective;
- d. That at some time during the existence of the agreement or conspiracy, at least one of its members performed an overt act in order to further the objective of the agreement.

1320a-7b(f). In September 2011, the Defendant certified to Medicare that he would comply with Medicare rules and regulations, including that he would refrain from violating the federal anti-kickback statute. Further, in August 2013, the Defendant certified to the U.S. Food and Drug Administration ("FDA"), as part of his ability to prescribe drugs known as Transmucosal Immediate Release Fentanyl ("TIRF") drugs, that: (a) he understood TIRF drugs are indicated only for the management of breakthrough pain in cancer patients; (b) he understood that TIRF drugs can be abused by patients; and (c) he understood that one TIRF drug is not interchangeable with another TIRF drug.

However, starting in June 2012, the Defendant knowingly and willfully solicited and received kickbacks and bribes for himself in the form of payments from Insys Therapeutics, Inc. ("Insys") and related entities. Insys is a pharmaceutical company. In January 2012, the FDA approved Insys's application to sell and market a TIRF drug named Subsys. The FDA only approved Subsys to treat cancer patients experiencing break-through pain, which is a sudden onset of pain in cancer patients that cannot be controlled with their usual treatment regimen. Subsys is a potent opioid designed to rapidly enter a patient's bloodstream upon being sprayed under the tongue. Subsys contains fentanyl, which is a synthetic opioid pain reliever that has a high potential for abuse and addiction. Because of the limited number of cancer patients experiencing breakthrough pain who fit the FDA-approved criteria, Insys devised an illegal kickback and bribery scheme to induce the Defendant and others to prescribe Subsys off-label for conditions other than breakthrough pain in cancer patients. In order to conceal and disguise that kickbacks and bribes were being paid to the Defendant to prescribe Subsys, Insys falsely designated payments to the Defendant as "honoraria" for purportedly providing educational programs about Subsys (the "Speakers Bureau Program"). The Defendant's participation in the Speakers Bureau Program was a sham. The Defendant often made these presentations at high-end restaurants, and to staff at the Practice and/or to persons who could not even prescribe controlled substances. The Defendant knew that these presentations were not designed to promote any bona fide educational initiative about Subsys but rather were required to receive the honoraria. Indeed, on one occasion, the Defendant was paid by Insys even though a speaking event was cancelled and no educational presentation was given at all. The Defendant was paid \$66,600 by Insys and related entities for these events, including a check in the amount of \$3,000 on July 15, 2015, a check in the amount of \$3,000 on September 29, 2015, and a check in the amount of \$3,000 on December 7, 2015. These payments were in fact kickbacks and bribes that were paid, at least in part, to induce the Defendant to prescribe, or in exchange for the Defendant

prescribing, Subsys. Pursuant to this illegal scheme, the Defendant did prescribe Subsys to patients of the Practice who were not suffering from cancer, some of whom insurance coverage was paid for, in whole or in part, by a federal healthcare program. He did so through January 2018. The Defendant switched several other patients to Subsys from another fentanyl-based drug because of the kickbacks he received from Insys, even though he previously certified that TIRF drugs were not interchangeable.

3. As of the date of this Order, Dr. Hoffberg has not been sentenced.

### DISCUSSION

Pursuant to COMAR 10.32.02.07E(2), Dr. Hoffberg may respond to the order to show cause, in writing, to address the following limited issues: “(a) Lack of conviction or plea; (b) Whether the crime is one involving moral turpitude; (c) Misidentity of the respondent with the defendant in the criminal matter; and (d) Other relevant issues, if any, other than mitigation.” Dr. Hoffberg submitted a response to the Petition, through counsel, simply stating that he acknowledged the Petition to Suspend and discussed it with counsel. Accordingly, Dr. Hoffberg did not dispute that the crime he pled guilty to, Conspiracy to Violate Anti-Kickback Statutes, is a crime involving moral turpitude.

Under Health Occ. §14-404(b)(1), a disciplinary panel has the obligation and discretion to determine what types of crimes are crimes involving moral turpitude for licensing and disciplinary purposes. “The term moral turpitude has been defined generally as importing an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” *Attorney Grievance Comm’n of Md. v. Walman*, 280 Md. 453, 459 (1977) (internal quotation marks omitted). “[I]t is settled that whatever else [moral turpitude] may mean . . . a crime in which an intent to defraud is an essential element is a crime involving moral turpitude. It is also settled that the related group of offenses involving intentional

dishonesty for purposes of personal gain are crimes involving moral turpitude[.]” *Id.* at 459-60. “[I]n the context of a licensing board’s review of the conduct of its licensee, the concept of moral turpitude is rather broad.” *Oltman v. Maryland State Bd. Of Physicians*, 162 Md. App. 457, 483 (2005).

The language of the statute that Dr. Hoffberg pled guilty to, 18 U.S.C. § 371 is:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Read together with the elements of the crime enumerated in the plea agreement, an intent to defraud is an essential element of the crime that Dr. Hoffberg pled guilty to. A “significant characteristic of conspiracy to commit a crime is that the defendant, to be found guilty of conspiracy, must have a specific intent to commit the offense which is the object of the conspiracy.” *Alston v. State*, 414 Md. 92, 114-15 (2010). Accordingly, through Dr. Hoffberg’s conspiracy, he possessed the specific intent to knowingly defraud the U.S. Government, which constitutes a crime involving moral turpitude *per se*.

In addition to the elements of the crime, the stipulated facts in this case also establish that Dr. Hoffberg’s crime involved moral turpitude. In considering the facts of the case, the relevant consideration is whether the crime “was accompanied by a fraudulent or dishonest intent.” *Walman*, 280 Md. at 462. In this case, Dr. Hoffberg admitted to accepting money in exchange for prescribing Subsys to his non-cancer patients, which was not medically indicated and, in doing so, was dishonest to his patients and the government for purposes of his own personal

gain. *Walman*, 280 Md. at 459-60. Therefore, the facts of this case also establish that Dr. Hoffberg pled guilty to a crime involving moral turpitude.

### CONCLUSION OF LAW

Based on the above-discussion, Panel B concludes that Dr. Hoffberg's guilty plea and conviction for Conspiracy to Violate Anti-Kickback Statutes is a crime involving moral turpitude. As a result, Health Occ. § 14-404(b)(1) requires Panel B to order the suspension of Dr. Hoffberg's license following his guilty plea and prior to his sentencing date.

### ORDER

It is, by Board Disciplinary Panel B, hereby:

**ORDERED** that the license of Howard J. Hoffberg, M.D., license number D30980, to practice medicine in Maryland is **SUSPENDED**, as mandated by Health Occ. § 14-404(b)(1); and it is further

**ORDERED** that this is a **PUBLIC DOCUMENT**. See Md. Code Ann., Health Occ. § 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

01/10/2022  
Date

***Signature on File***

Christine A. Farrelly, Executive Director  
Maryland State Board of Physicians

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

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Hoffberg 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. Hoffberg files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Christine A. Farrelly, Executive Director  
Maryland State Board of Physicians  
4201 Patterson Avenue  
Baltimore, Maryland 21215**

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

**Stacey Darin, Assistant Attorney General  
Office of the Attorney General  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201**