

<b>IN THE MATTER OF</b>	*	<b>BEFORE THE</b>
<b>HOWARD J. HOFFBERG, M.D.</b>	*	<b>MARYLAND STATE</b>
<b>Respondent</b>	*	<b>BOARD OF PHYSICIANS</b>
<b>License Number: D30980</b>	*	<b>Case Number: 2222-0105(B)</b>
* * * * *		

**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 Statute, in violation of 18 U.S.C. § 371.<sup>1</sup> On March 2, 2022, Dr. Hoffberg was sentenced to eight months in prison to commence on his reporting date of April 18, 2022, followed by one year of supervised probation, and payment of a \$55,000.00 fine.

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. On January 10, 2022, Board Disciplinary Panel B issued an Order suspending the license of Dr. Hoffberg pursuant to Health Occ. § 14-404(b)(1).<sup>2</sup>

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<sup>1</sup> The citation for the Anti-Kickback Statute is 42 U.S.C. § 1320a-7b.

<sup>2</sup> At the time the Petition was filed in this case, Dr. Hoffberg had not yet been sentenced. Accordingly, a Petition to suspend Dr. Hoffberg’s license was filed pursuant to Health Occ. § 14-404(b)(1) instead of a petition to revoke pursuant to Health Occ. § 14-404(b)(2), which is now warranted after the completion of sentencing.

On November 28, 2022, the Office of the Attorney General filed with the Board a petition to revoke Dr. Hoffberg's license to practice medicine and a proposed show cause order pursuant to section 14-404(b)(2) of the Maryland Medical Practice Act. The statute provides:

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

Attached to the Petition was a copy of Panel B's January 10, 2022 Final Decision and Order, certified docket entries and the judgment. Dr. Hoffberg was ordered by the Board to show cause in writing, on or before January 3, 2023, if there was any reason why his license should not be revoked. On December 27, 2022, the Board received a response from Dr. Hoffberg stating "I would like to address Panel B at the Board of Physicians hearing for 'Show Cause Order' regarding the petition for revocation of my Maryland license." The Panel, in its discretion, denied Dr. Hoffberg's request for a hearing pursuant to COMAR 10.32.02.07E(3). 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 Statute, in violation of 18 U.S.C. § 371, in the United States District Court for the District of Maryland.<sup>3</sup> *USA v. Hoffberg*, case number: 1:21-cr-00178-GLR-1.

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<sup>3</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;

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. § 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 other 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").

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- 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.

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. On January 10, 2022, Panel B issued a final decision and order suspending Dr. Hoffberg's license to practice medicine pursuant to Health Occ. § 14-404(b)(1).
4. On March 2, 2022, Dr. Hoffberg was sentenced to eight months in prison to commence on his reporting date of April 18, 2022, followed by one year of supervised probation, and payment of a \$55,000.00 fine.
5. The time for filing an appeal has passed and the conviction has not been reversed and the guilty plea has not been set aside.

## 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 asking to address the Panel at a show cause hearing. The ability to address the panel at a hearing, however, is "discretionary based on the existence of genuine issues of material fact or law as determined by the disciplinary panel." COMAR

10.32.02.07E(3). Dr. Hoffberg did not state what issues he wished to discuss with the disciplinary panel and did not appeal the January 10, 2022 Final Decision and Order. Because the Panel has already determined that Dr. Hoffberg's conviction for Conspiracy to Violate Anti-Kickback Statutes is a crime involving moral turpitude there are no material issues of law to resolve. The Panel, in its discretion, therefore, denies Dr. Hoffberg's request for a hearing.

Section 14-404(b)(2) of the Health Occupations Article provides: "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, a disciplinary panel shall order the revocation of a license on the certification by the Office of the Attorney General." In the final decision and order issued on January 10, 2022, Panel B determined that Dr. Hoffberg's conviction and guilty plea to one count of Conspiracy to Violate Anti-Kickback statutes, in violation of 18 U.S.C. § 371, is a crime involving moral turpitude and suspended Dr. Hoffberg's license to practice medicine. The relevant portion of the discussion section from the January 10, 2022 order is as follows:

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.

The appellate process is now complete and Dr. Hoffberg’s conviction and guilty plea have not been set aside, as a result, Panel B is now required to order the revocation of Dr. Hoffberg’s license to practice medicine pursuant to section 14-404(b)(2) of the Health Occupations Article.

#### **CONCLUSION OF LAW**

In the January 10, 2022 Final Decision and Order, Panel B concluded that Dr. Hoffberg pled guilty to and was convicted of a crime involving moral turpitude. Pursuant to section 14-404(b)(2) of the Health Occupations Article, upon the completion of the appellate proceedings, Panel B is now required to order the revocation of Dr. Hoffberg’s license to practice medicine.

**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 **REVOKED**, as mandated by Health Occ. § 14-404(b)(2); and it is further

**ORDERED** that the suspension imposed in the January 10, 2022 Order, issued by Panel B, is **TERMINATED AS MOOT**; 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).

03/06/2023  
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**