

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

IN THE MATTER
OF
IRINA KIMYAGAROVA, D.O.

MODIFICATION
ORDER
BPMC No. #08-194

Upon the proposed Application for a Modification Order of **IRINA KIMYAGAROVA, D.O.** (Respondent), that is made a part of this Modification Order, it is agreed and

ORDERED, that the attached Application and its terms are adopted and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either by mailing, by first class mail, a copy of the Modification Order by first class mail to Respondent at the address in the attached Application or by certified mail to Respondent's attorney or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 1-28-2009

Redacted Signature

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional
Medical Conduct

IN THE MATTER
OF
IRINA KIMYAGAROVA, D.O.

APPLICATION FOR
MODIFICATION ORDER

IRINA KIMYAGAROVA, D.O., (Respondent) being duly sworn deposes and says:

That on or about August 8, 2001, I was licensed to practice as a physician in the state of New York, having been issued license number 222382 by the New York State Education Department.

My current address is Redacted Address

I am currently subject to Determination and Order BPMC #08-194, (hereinafter "Original Order"), annexed hereto, made a part, hereof, and marked as Exhibit 1, that was issued on October 10, 2008.

I apply, hereby, to the State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: to delete the paragraphs in the Original Order, on page 6, that state:

" 2. The license of the Respondent to practice medicine in New York State is **hereby limited**, for a period of seven years, to practice, under the supervision of a practice monitor, in an Article 28 Hospital or facility

3. After a period of seven years in such service, the Respondent may apply to OPMC to have this limitation on her license removed."

substituting, therefor:

" 2. Respondent shall be on PROBATION for a period of five (5) years and shall comply with the terms of probation that are annexed and attached hereto as "Appendix 2,"

The Modification Order to be issued will not constitute a new disciplinary action against me.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance of the Board of this Application, I knowingly waive the right to contest the Original Order or the Modification Order for which I apply, both administratively and judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion to either enter into the proposed Agreement and Modification Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

AFFIRMED:

DATED: 01/16/09

Redacted Signature

IRINA KIMYAGAROVA, D.O.
Respondent

The undersigned agree to the attached Application of Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 1.16.09

Redacted Signature

NATHAN L. DEMBIN, ESQ.
Attorney for Respondent

DATE: 20 January 2009

Redacted Signature

ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 1/26/09

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

"APPENDIX 2"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York Education Law §§ 6530 or 6531 shall constitute a violation of probation and may Subject Respondent to an action pursuant to New York Public Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's 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. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matter set forth in Exhibit "A" or as are necessary to protect the public health.
7. 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 a practice locations or OPMC offices.
8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.

9. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
10. Respondent shall enroll in and complete a continuing education program in the area of professional ethics. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.
11. Respondent's practice of medicine is restricted from providing services or care to any individual covered by no-fault insurance.
12. Respondent shall make available for review by a third party billing monitor any and all office and accounts records, as directed by OPMC. Such billing monitor shall be proposed by Respondent and approved, in writing, by the Director, OPMC. Respondent shall fully cooperate in the review process. The review will determine whether Respondent's billing practice is conducted in accordance with the generally accepted standards of professional medical care.
 - a. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the billing monitor.
 - b. Respondent shall cause the billing monitor to report quarterly, in writing, to the Director of OPMC.
13. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

October 14, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Irina Kimyagarova, D.O.

Redacted Address

Nathan L. Dembin, Esq.

225 Broadway – Suite 1400
New York, New York 10007

Robert Bogan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Irina Kimyagarova, D. O.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-194) 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

Redacted Signature

(James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER
OF
IRINA KIMYAGAROVA , D.O.

DETERMINATION

AND

ORDER

BPMC #08-194

COPY

A hearing was held on September 17, 2008, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated August 13, 2008, were served upon the Respondent, **Irina Kimyagarova, D.O.** Pursuant to Section 230(10)(e) of the Public Health Law, **Peter S. Koenig, Sr.**, Chairperson, **Eleanor C. Kane, M.D.**, and **Trevor A. Litchmore, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared with counsel, **Nathan L. Dembin, Esq.**, of New York, New York.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF THE CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)((a)(i) by having been found guilty of committing a crime under state law, specifically, a scheme to defraud in the first degree, in violation of New York Penal Law §190.65, a Class E felony.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Irina Kimyagarova, D.O.

Roberto Cardenas, Esq.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to transcript page numbers or exhibits, denoted by the prefixes "T." or "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. **Irina Kimyagarova, D.O.**, the Respondent, was authorized to practice medicine in New York State on August 8, 2001, by the issuance of license number 222382 by the New York State Education Department (Petitioner's Ex. 4).

2. On August 29, 2006, the Respondent was found guilty, based on a plea of guilty, of committing a crime under state law, specifically, a scheme to defraud in the first degree, in violation of New York Penal Law §190.65, a Class E felony. (Ex. 5)

3. For the above crime, the Respondent was sentenced to \$100,000.00 fine and a three year conditional discharge. (Ex. 5)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(i) by having been found guilty, after a plea of guilty, of committing a crime under state law, specifically, a scheme to defraud in the first degree, in violation of New York Penal Law §190.65, a Class E felony.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was indicted for fraud in Queens County. It appears that the Respondent pled guilty to a crime, specifically, a scheme to defraud in the first degree, in violation of New York Penal Law §190.65, a Class E felony. After a guilty plea, Respondent was sentenced to \$100,000.00 fine and a three-year conditional discharge.

The record in this case shows that the Respondent was authorized to practice medicine in New York State on August 8, 2001, by the issuance of license number 222382 by the New York State Education Department. At the hearing, the Petitioner presented thorough documentation establishing that the Respondent was charged and pled guilty in August 2006 to a fraud charge in Queens County and that she paid a \$100,000 fine and was given a three year conditional discharge as her sentence.

In an effort to lessen the penalty and to explain his client's conduct, the Respondent's attorney offered the testimony of her New York City criminal lawyer, Roberto Cardenas, who testified that he helped resolve issues with State Farm Insurance (T. 23). Attorney Cardenas testified that the respondent made efforts to resolve the criminal and civil matters resulting from her actions and that her goal was to "make amends." (T. 24) Attorney Cardenas testified that the Respondent was remorseful and contrite. (T. 26) and that she fully cooperated with the authorities and that is why she was given the lowest sentence, the conditional discharge.

There was no dispute about the charge and the documents from the Supreme Court, Queens County, Petitioner's Ex. 5, were received into evidence and made a part of the record herein without objection from the Respondent or her attorney. The documents in the record go on to establish that the above charges were brought before the Honorable A. Cooperman, Judge for the Supreme Court, Queens County. The

Respondent testified on her own behalf and did not deny the fact that she pled guilty to the above crime and she candidly acknowledged that she was guilty as charged. (T. 66). She indicated that she has paid her fine and is very remorseful and that she acknowledged what she did was wrong. (T. 67)

She indicated that she comes from a family of health care providers and that, from the sixth grade, it was her dream to be a doctor. She stated that she grew up in Uzbekistan and that, for a Jew, it was very difficult to pursue a medical education but she persevered. (T. 51 *et seq.*) After the fall of the Soviet Union she came to the United State and pursued a medical degree and she graduated in 1999 and was a resident until 2002. In 2002 she became board certified in Family Practice. As she was completing her medical education, she was pregnant and concerned with the future practice. It was at this time that she was approached by a fellow countryman from Uzbekistan who assured her that he could set her up in a practice, and this was the genesis of the association that resulted in her conviction. (T. 57 *et seq.*) Respondent's Exhibit B is a letter from this person, Robert Shimunov, who acknowledges that he took advantage of the Respondent because she was "fresh" out of school, and that he could keep her in the dark about his fraudulent practices.

Finally, the Respondent's attorney presented a letter from State Farm Insurance, Respondent's Exhibit C, which shows that the Respondent did cooperate with State Farm in its investigations and that she was one of the first to cooperate and that she helped substantially in identifying other individuals who participated in large scale no-fault fraud.

In assessing the penalty to be imposed in this case, the panel took many factors into account, not the least of which was the fact that she was naïve, inexperienced, and pregnant, and thus somewhat vulnerable, as she began her fraudulent practice. The panel took into account the seriousness of the crimes that were committed but also found

that the Respondent had paid for her crime, was apparently remorseful, and was now ready to resume her role in society. The panel did not underestimate the positive impact of the Respondent's work in cooperating with the insurance fraud investigators and thus decided not to revoke her license. The panel was satisfied that the people of New York would be protected with a seven-year limitation on her license, which would restrict her practice to work in Article 28 hospitals or facilities under supervision.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is **hereby limited**, for a period of seven years, to practice, under the supervision of a practice monitor, in an Article 28 Hospital or facility
3. After a period of seven years in such service, the Respondent may apply to OPMC to have this limitation on her license removed.
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Dewitt, New York
October 10, 2008

Redacted Signature

Peter S. Koenig, Sr., Chairperson,
Eleanor C. Kane, M.D.,
Trevor A. Litchmore, M.D.,

To:

Irina Kimyagarova, D.O.,

Redacted Address

Nathan L. Dembin, Esq.,
225 Broadway, Suite 1400
New York, New York 10007

Robert Bogan, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299

APPENDIX 1



IN THE MATTER
OF
IRINA KIMYAGAROVA, D.O.
CO-07-07-4316-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: IRINA KIMYAGAROVA, D.O.
Redacted Address

IRINA KIMYAGAROVA, D.O.
6384 Saunders Street
Rego Park, NY 11374

The undersigned, Richard F. Daines, M.D., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that **IRINA KIMYAGAROVA, D.O.**, Respondent, licensed to practice medicine in the State of New York on August 8, 2001, by license number 222382, has been convicted of committing an act constituting a felony under New York state law, as is more fully set forth in the Statement of Charges attached, hereto, and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), effective immediately **IRINA KIMYAGAROVA, D.O.**, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law §230(12).

ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN
DEFIANCE OF THIS COMMISSIONER'S ORDER SHALL
CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE
MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY
CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY,
DEFINED BY NEW YORK EDUCATION LAW §6512.

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 17th day of September 2008, at 10:00 a.m., at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel. Respondent has the right to produce witnesses and evidence on her behalf, to issue or have subpoenas issued on her behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against her. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
12/13/2008

Redacted Signature

RICHARD F. DAINES, M.D.
Commissioner of Health
New York State Department of Health

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
IRINA KIMYAGAROVA, D.O.
CO-07-07-4316-A

STATEMENT
OF
CHARGES

IRINA KIMYAGAROVA, D.O., Respondent, was authorized to practice medicine in New York state on August 8, 2001, by the issuance of license number 222382 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 29, 2006, in Supreme Court of the State of New York, Queens County, Kew Gardens, New York, Respondent was found guilty, based on a plea of guilty, of scheme to defraud in the first degree, in violation of New York Penal Law §190.65, a class E felony, and on or about December 6, 2007, was sentenced to a \$100,000.00 fine, a \$10.00 CVAF, a \$200.00 surcharge, and a three (3) year conditional discharge.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *Aug. 12*, 2008
Albany, New York

Redacted Signature

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct