

FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
February 2012 Grand Jury

CR12-0415

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12 UNITED STATES OF AMERICA,)
13 Plaintiff,)
14 v.)
15 GEORGE SAMUEL LAING,)
16 AUGUSTUS OHMENG, M.D.,)
17 GEORGE TARRYK, M.D., and)
18 EMMANUEL CHIDUEME,)
Defendants.)

No. CR
INDICTMENT
[18 U.S.C. § 1347: Health Care
Fraud; 18 U.S.C. § 2(b):
Causing an Act To Be Done]

The Grand Jury charges:

COUNTS ONE THROUGH SIX

[18 U.S.C. §§ 1347, 2(b)]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

The Defendants, the Pacific Clinic, Ivy Medical Supply, and Santos Medical Supply

1. Defendant GEORGE SAMUEL LAING ("LAING") was the manager and operator of the medical clinic that was located at

RSK

1 2491 Pacific Avenue, Suite #2, Long Beach, California (the
2 "Pacific Clinic"), within the Central District of California.

3 2. Defendant AUGUSTUS OHEMENG, M.D. ("OHEMENG") was a
4 physician who treated patients at the Pacific Clinic.

5 3. Defendant GEORGE TARRYK, M.D. ("TARRYK") was a
6 physician who treated patients at the Pacific Clinic.

7 4. Defendant EMMANUEL CHIDUEME was the owner and operator
8 of Ivy Medical Supply, Inc. ("Ivy"), a durable medical equipment
9 ("DME") supply company.

10 5. From in or about June 2004 until at least in or about
11 September 2009, Ivy was located at 1304 South Magnolia Avenue,
12 Anaheim, California, within the Central District of California.
13 Ivy became a Medicare provider and was issued a Medicare provider
14 number on or about June 30, 2002.

15 6. Santos Medical Supply ("Santos") was a DME supply
16 company located at 2821 South Vermont Avenue in Los Angeles,
17 California, within the Central District of California.

18 7. Ivy and Santos purported to provide to Medicare
19 beneficiaries, among other things, enteral nutrition, which was a
20 liquid nutritional supplement sold under brand names such as
21 Ensure and Glucerna, and enteral nutrition feeding supply kits,
22 which were kits that included syringes used to administer enteral
23 nutrition to patients who received their nutrition through a
24 feeding tube rather than by mouth.

25 8. Between in or about February 2005 and in or about
26 September 2008, defendants OHEMENG and TARRYK, while practicing
27 at the Pacific Clinic, prescribed enteral nutrition and feeding
28 supply kits to approximately 370 Medicare beneficiaries whom

1 defendant LAING referred to Santos. Between in or about February
2 2005 and in or about September 2009, defendants OHEMENG and
3 TARRYK, while practicing at the Pacific Clinic, prescribed
4 enteral nutrition and feeding supply kits to approximately 367
5 Medicare beneficiaries whom defendant LAING referred to Ivy.

6 9. Between in or about February 2005 and in or about
7 September 2009, based on prescriptions written by defendants
8 OHEMENG and TARRYK, Santos and Ivy billed Medicare approximately
9 \$2,373,922 and \$3,314,177, respectively, for enteral nutrition
10 and feeding supply kits allegedly supplied to Medicare
11 beneficiaries. Based on these claims, Medicare paid Santos and
12 Ivy approximately \$1,451,414 and \$1,518,254, respectively.

13 The Medicare Program

14 10. Medicare was a federal health care benefit program,
15 affecting commerce, that provided benefits to individuals who
16 were over the age of 65 or disabled. Medicare was administered
17 by the Centers for Medicare and Medicaid Services ("CMS"), a
18 federal agency within the United States Department of Health and
19 Human Services.

20 11. Individuals who qualified for Medicare benefits were
21 commonly referred to as Medicare "beneficiaries." Each
22 beneficiary was given a Health Identification Card Number
23 ("HICN") unique to that beneficiary.

24 12. DME companies, physicians, and other health care
25 providers that provided services that were reimbursed by
26 Medicare were referred to as "providers."

27 13. To become eligible to participate in Medicare, Medicare
28 required DME companies to submit an application in which the

1 company agreed to comply with all Medicare-related laws and
2 regulations. If Medicare approved the application, Medicare
3 assigned the DME company a Medicare "provider number," which
4 enabled the DME company to submit claims to Medicare for
5 reimbursement for products provided to Medicare beneficiaries.

6 14. Most DME providers, including Santos and Ivy, submitted
7 their claims electronically.

8 15. Medicare required a claim for Medicare reimbursement of
9 DME to set forth, among other things, the beneficiary's name and
10 HICN, the type of DME provided to the beneficiary, the date that
11 the DME was provided, and the name and Unique Physician
12 Identification Number ("UPIN") and/or the National Provider
13 Identifier ("NPI") of the physician who prescribed or ordered the
14 DME.

15 16. Medicare reimbursed DME providers only for DME that was
16 medically necessary to the treatment of a beneficiary's illness
17 or injury, was prescribed by a beneficiary's physician, and was
18 provided in accordance with Medicare regulations and guidelines
19 that governed whether a particular item would be reimbursed by
20 Medicare.

21 17. To bill Medicare, a DME provider submitted a claim
22 (Form 1500), which Medicare required to be truthful, complete,
23 and not misleading. In addition, when submitting a claim to
24 Medicare, a DME provider certified that the services or supplies
25 covered by the claim were medically necessary.

26 18. Prior to January 2007, for some types of DME, including
27 enteral nutrition, Medicare also required a Certificate of
28 Medical Necessity ("CMN"), signed by the referring physician,

1 certifying that the patient had the medical conditions necessary
2 to justify the DME.

3 19. For enteral nutrition to be covered by Medicare, the
4 Medicare beneficiary who received the enteral nutrition must have
5 had some illness or injury that prevented him from swallowing or
6 ingesting nutrients by mouth. Medicare would not cover
7 nutritional supplements for patients who were able to drink
8 nutritional supplements normally.

9 20. Patients receiving enteral nutrition through a feeding
10 tube required approximately 1600 calories per day. Such patients
11 generally required one syringe per day to inject the enteral
12 nutrition into a feeding tube.

13 B. THE FRAUDULENT SCHEME

14 21. Beginning on or about February 28, 2005, and continuing
15 through on or about September 30, 2009, in Los Angeles County,
16 within the Central District of California, and elsewhere,
17 defendants LAING, OHEMENG, TARRYK, and CHIDUEME, together with
18 others known and unknown to the Grand Jury, knowingly, willfully,
19 and with intent to defraud, executed and attempted to execute a
20 scheme and artifice: (a) to defraud a health care benefit
21 program, namely Medicare, as to material matters in connection
22 with the delivery of and payment for health care benefits, items,
23 and services; and (b) to obtain money from Medicare by means of
24 material false and fraudulent pretenses and representations and
25 the concealment of material facts in connection with the delivery
26 of and payment for health care benefits, items, and services.

27 22. The fraudulent scheme operated, in substance, in the
28 following manner:

1 a. Defendant LAING opened and operated the Pacific
2 Clinic and recruited defendants OHEMENG and TARRYK as treating
3 physicians for the clinic.

4 b. Defendant CHIDUEME established Ivy, a retail DME
5 company, and operated Ivy for the purpose of submitting claims to
6 the Medicare program.

7 c. Defendant LAING used patient recruiters, known as
8 "marketers" or "cappers," for the purpose of bringing Medicare
9 beneficiaries to the Pacific Clinic.

10 d. At the Pacific Clinic, defendants OHEMENG and
11 TARRYK performed physical examinations and administered tests for
12 Medicare beneficiaries. Following the examinations, defendants
13 OHEMENG and TARRYK prescribed Medicare beneficiaries 1600
14 calories of enteral nutrition per day "with feeding syringes."

15 e. The prescriptions for enteral nutrition and
16 feeding syringes written by defendants OHEMENG and TARRYK were
17 fraudulent in that the Medicare beneficiaries were not tube fed,
18 did not require a full daily value of 1600 calories in liquid
19 nutrition, and had no need for prescription syringes.

20 f. Defendant OHEMENG fraudulently and falsely signed
21 CMNs certifying that patients were tube fed and could not ingest
22 food orally, even though, as defendant OHEMENG then well knew,
23 the patients did not have a feeding tube and could ingest food
24 orally.

25 g. Once defendants OHEMENG and TARRYK wrote the false
26 and fraudulent enteral nutrition prescriptions, defendant LAING
27 referred the prescriptions to DME supply companies, including
28 Santos and Ivy, in exchange for kickback payments. A Santos

1 employee, J.G., and others known and unknown to the Grand Jury,
2 paid LAING approximately \$300 for each enteral nutrition and
3 feeding supply kit prescription. Defendant CHIDUEME, on behalf
4 of Ivy, also made kickback payments to defendant LAING in
5 exchange for the referral of enteral nutrition and feeding supply
6 kit prescriptions.

7 h. Based on the false and fraudulent prescriptions
8 written by defendants OHEMENG and TARRYK and referred by
9 defendant LAING, one or more co-schemers at Santos submitted and
10 caused to be submitted false and fraudulent claims to Medicare on
11 behalf of Santos, falsely representing that Santos had supplied
12 Medicare beneficiaries with certain quantities of medically
13 necessary enteral nutrition and feeding supply kits when, in
14 truth and fact, the enteral nutrition and feeding supply kits
15 were not medically necessary because the beneficiaries were
16 drinking the liquid nutrition normally and Santos was supplying
17 only a fraction of the enteral nutrition and supply kits for
18 which it was billing Medicare.

19 i. Based on the false and fraudulent prescriptions
20 written by defendants OHEMENG and TARRYK and referred by
21 defendant LAING, defendant CHIDUEME submitted and caused to be
22 submitted false and fraudulent claims to Medicare on behalf of
23 Ivy, falsely representing that Ivy had supplied Medicare
24 beneficiaries with certain quantities of medically necessary
25 enteral nutrition and feeding supply kits when, in truth and
26 fact, the enteral nutrition and feeding supply kits were not
27 medically necessary because the beneficiaries were drinking the
28 liquid nutrition normally and Ivy was supplying only a fraction

1 of the enteral nutrition and feeding supply kits for which it was
 2 billing Medicare.

3 j. Between in or about February 2005 and in or about
 4 September 2008, Santos submitted false and fraudulent claims to
 5 Medicare for enteral nutrition and enteral nutrition feeding
 6 supply kits in the amount of approximately \$2,373,922. Medicare
 7 in turn paid Santos approximately \$1,451,414 on those claims.

8 k. Between in or about February 2005 and in or about
 9 September 2009, Ivy submitted false and fraudulent claims to
 10 Medicare for enteral nutrition and enteral nutrition feeding
 11 supply kits in the amount of approximately \$3,314,177. Based on
 12 these claims, Medicare paid Ivy approximately \$1,518,254.

13 C. EXECUTION OF THE FRAUDULENT SCHEME

14 23. On or about the dates set forth below, within the
 15 Central District of California and elsewhere, the defendants
 16 listed below, together with others known and unknown to the Grand
 17 Jury, for the purpose of executing and attempting to execute the
 18 fraudulent scheme described above, knowingly and willfully caused
 19 to be submitted to Medicare the following false and fraudulent
 20 claims for payment for DME purportedly provided to the
 21 beneficiaries listed below:

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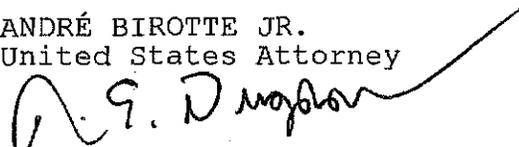
<u>COUNT</u>	<u>DEFENDANT</u>	<u>CLAIM NUMBER/ DME COMPANY</u>	<u>DATE CLAIM SUBMITTED</u>	<u>AMOUNT OF CLAIM</u>	<u>BENEFICIARY - TYPE OF DME</u>
ONE	LAING, OHEMENG, TARRYK	10712284 7993000 (SANTOS)	05/2/2007	\$636.43	S.Y. - enteral nutrition and syringes

1	TWO	LAING, OHEMENG, TARRYK	10818385 3073000 (SANTOS)	7/1/2008	\$636.43	S.P. - enteral nutrition and syringes
2						
3	THREE	LAING, OHEMENG, TARRYK	10824682 7299000 (SANTOS)	9/2/2008	\$971.10	S.L. - enteral nutrition and syringes
4						
5	FOUR	LAING, OHEMENG, TARRYK, CHIDUEME	10833785 8672000 (IVY)	12/02/2008	\$779.65	S.L. - enteral nutrition and syringes
6						
7	FIVE	LAING, OHEMENG, TARRYK, CHIDUEME	10915680 5900000 (IVY)	06/05/2009	\$754.50	S.P. - enteral nutrition and syringes
8						
9	SIX	LAING, OHEMENG, TARRYK, CHIDUEME	10924580 6295000 (IVY)	09/02/2009	\$754.50	S.Y. - enteral nutrition and syringes
10						
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13						

14 A TRUE BILL

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16 181
17 Foreperson

18
19 ANDRÉ BIROTTE JR.
United States Attorney

20 
21 ROBERT E. DUGDALE
Assistant United States Attorney
22 Chief, Criminal Division

23 BEONG-SOO KIM
Assistant United States Attorney
24 Chief, Major Frauds Section

25 CONSUELO S. WOODHEAD
Assistant United States Attorney
26 Deputy Chief, Major Frauds Section

27 GRANT B. GELBERG
Special Assistant United States Attorney
28 Major Frauds Section

1 COUNT TWO

2 We, the jury in the above-captioned cause, unanimously find
3 the defendant Augustus Ohemeng:

4
5 X GUILTY

6
7 _____ NOT GUILTY

8 of committing health care fraud as charged in Count Two of the
9 indictment.

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15 COUNT THREE

16 We, the jury in the above-captioned cause, unanimously find
17 the defendant Augustus Ohemeng:

18
19 X GUILTY

20
21 _____ NOT GUILTY

22 of committing health care fraud as charged in Count Three of the
23 indictment.

1 COUNT FOUR

2 We, the jury in the above-captioned cause, unanimously find
3 the defendant Augustus Ohemeng:

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5 X GUILTY

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7 NOT GUILTY

8 of committing health care fraud as charged in Count Four of the
9 indictment.

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15 COUNT FIVE

16 We, the jury in the above-captioned cause, unanimously find
17 the defendant Augustus Ohemeng:

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19 X GUILTY

20

21 NOT GUILTY

22 of committing health care fraud as charged in Count Five of the
23 indictment.

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1 COUNT SIX

2 We, the jury in the above-captioned cause, unanimously find
3 the defendant Augustus Ohemeng:

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X GUILTY

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____ NOT GUILTY

8 of committing health care fraud as charged in Count Six of the
9 indictment.

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11 DATED: March 6, 2013, at Los Angeles, California.

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REDACTED

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FOREPERSON OF THE JURY

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**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. CR12-415-CAS ENTER

Defendant AUGUSTUS OHMENG, M.D.
Augustus Kwadwo Atta Ansong Ohemeng (true
akas: name)

Social Security No. [REDACTED]
(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
07	22	2013

COUNSEL Edward Robinson, Retained/Tecia Barton, Retained
(Name of Counsel)

PLEA **GUILTY**, and the court being satisfied that there is a factual basis for the plea. **NOLO** **NOT**
CONTENDERE **GUILTY**

FINDING There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:
Health Care Fraud in violation of 18 USC 1347, as charged in Counts 1, 2, 3, 4, 5, and 6 of the 6-Count Indictment.

JUDGMENT AND PROB/ COMM ORDER The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed on Counts 1, 2, 3, 4, 5, and 6 of the 6-Count Indictment to the custody of the Bureau of Prisons to be imprisoned for a term of: **FORTY-TWO (42) MONTHS, on each of Counts 1 through 6 of the Indictment, to be served concurrently.**

It is ordered that the defendant shall pay to the United States a special assessment of \$600.00, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25.00 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

It is ordered that the defendant shall pay restitution in the total amount of \$2,964,934 pursuant to 18 U.S.C. § 3663A.

The amount of restitution ordered shall be paid to the victim as set forth in a separate victim list prepared by the probation office which this Court adopts and which reflects the Court's determination of the amount of restitution due to each victim. The victim list, which shall be forwarded to the fiscal section of the clerk's office, shall remain confidential to protect the privacy interests of the victim. A partial payment of \$25,000.00 shall be paid immediately. The balance shall be due during the period of imprisonment, at the rate of not less than \$25.00 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program. If any amount of the restitution remains unpaid after release from custody, nominal monthly payments of at least 10% of defendants's gross monthly income, but not less than \$250.00, whichever is greater, during the period of supervised release. These payments shall begin thirty (30) days after the commencement of supervision. Nominal restitution payments are ordered as the court finds that the defendant's economic circumstances do not allow for future payment of the amount ordered.

The defendant shall be held jointly and severally liable with co-participants, George Laing, George Tarryk and Emmanuel Chidueme for the amount of restitution ordered in this judgment. The victim's recovery is limited to the amount of its loss and the defendant's liability for restitution ceases if and when the victims receive full restitution.

Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The defendant shall comply with General Order No. 01-05.

All fines are waived as it is found that the defendant does not have the ability to pay a fine in addition to restitution.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three (3) years. This term consists of three (3) years on each of Counts 1 through 6, all such terms to run concurrently, under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U. S. Probation Office, General Order 05-02, and General Order 01-05, including the three special conditions delineated in General Order 01-05;
2. During the period of community supervision, the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment;
3. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritance, judgements and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation;
4. The defendant shall cooperate in the collection of a DNA sample from the defendant; and
5. The defendant shall not be employed in any position that requires licensing and/or certification by any local, state or federal agency without prior approval of the Probation Officer.

It is further ordered that the defendant surrender himself to the institution designated by the Bureau of Prisons on or before 12 noon, September 23, 2013. In the absence of such designation, the defendant shall report on or before the same date and time, to the United States Marshal located at the Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012.

USA vs. AUGUSTUS OHEMENG, M.D.

Docket No.: CR12-415-CAS

Defendant is informed of his right to appeal.

Bond is exonerated upon surrender.

The Court hereby recommends that defendant be designated to a facility in Southern California, or as close thereto as possible.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

July 22, 2013

Date

Christine A. Snyder

U. S. District Judge/Magistrate Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

July 22, 2013

Filed Date

By /S/

Deputy Clerk

USA vs. AUGUSTUS OHEMENG, M.D.Docket No.: CR12-415-CAS

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution-pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:
 - Private victims (individual and corporate),
 - Providers of compensation to private victims,
 - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

USA vs. AUGUSTUS OHEMENG, M.D.

Docket No.: CR12-415-CAS

SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure; and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

_____ By _____
Date Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

_____ By _____
Filed Date Deputy Clerk

USA vs. AUGUSTUS OHEMENG, M.D.

Docket No.: CR12-415-CAS

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant

Date

U. S. Probation Officer/Designated Witness

Date

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended)	
Accusation Against:)	
)	
Augustus Kwadwo Atta Ohemeng, M.D.)	Case No. 11-2012-223147
)	
Physician's and Surgeon's)	
Certificate No. A 48589)	
)	
Respondent)	
<hr/>)	

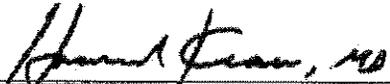
DECISION AND ORDER

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 8, 2016.

IT IS SO ORDERED June 10, 2016.

MEDICAL BOARD OF CALIFORNIA

By: 
Howard Krauss, M.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

AUGUSTUS K.A. OHEMENG, M.D.,

Physician's and Surgeon's Certificate
Number A 48589

Respondent.

Case No. 11-2012-223147

OAH No. 2015030959

PROPOSED DECISION

A hearing in this matter convened before Administrative Law Judge (ALJ) Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, in Sacramento, California, on February 1, 2016.

Deputy Attorney General John Gatschet represented complainant Kimberly Kirchmeyer, in her official capacity as Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Respondent Augustus K.A. Ohemeng, M.D., represented himself by telephone from Federal Prison South Camp, in Lompoc, California.

Oral and documentary evidence was presented. At the hearing, respondent's request to present his direct testimony in writing was granted and a new hearing date was to be scheduled for cross-examination. As discussed in below, complainant waived her right to cross-examine respondent and the parties submitted written closing argument. Pursuant to the March 14, 2016 Case Status Order, the record closed and the matter was submitted for decision on April 11, 2016.

FACTUAL FINDINGS

1. *License History:* On August 21, 1990, the Board issued Physician's and Surgeon's Certificate Number A 48589 to Augustus K.A. Ohemeng, M.D. (respondent). On

February 25, 2014, an Automatic Suspension Order - No Practice was issued. Respondent's certificate expired on April 30, 2014, and is currently in delinquent status.¹

2. *Accusation:* On April 7, 2014, complainant filed an Accusation seeking to discipline respondent's license under Business and Professions Code sections 490, 2236 and 2236.1, based upon his felony conviction for health care fraud, and under section 2234 for unprofessional conduct, based upon the facts and circumstances resulting in this conviction.

3. On September 17, 2014, respondent filed his Notice of Defense and request for hearing. Respondent asked that any hearing not be conducted until "at least 9 months after Respondent is released from the Half Way House custody of the Bureau of Prisons ('BOP')." Based on his anticipated release date, respondent requested that the hearing be scheduled "no earlier than June 1, 2018."

4. The hearing on the Accusation was scheduled for February 1 through 3, 2016. On April 27, 2015, respondent filed a 'Motion for Continuance or in the Alternative Stipulation of Resolution,' requesting that the hearing be continued to December 5, 2016, six months after his anticipated release date, to allow him time to prepare and present his defense that his health care fraud conviction is not substantially related to the qualifications, functions and duties of a physician. As an alternative, respondent offered to stipulate to the suspension of his license until the matter could be heard following his release from the BOP. On April 29, 2015, respondent's request to continue was denied and respondent was authorized to appear at the hearing by telephone.

5. *First Amended Accusation:* On October 26, 2015, complainant filed a First Amended Accusation, re-alleging the original two causes for discipline and adding a third cause for discipline under Business and Professions Code section 2305, based on respondent's license discipline imposed by another state.

6. On January 14, 2016, respondent renewed his request for a continuance of the hearing. On January 27, 2016, this request was denied and respondent was authorized to appear at the hearing by telephone.

7. *February 1, 2016 Hearing:* At the hearing, respondent renewed his request to continue the hearing until after his release from incarceration. Respondent argued that he had not been timely served with the First Amended Accusation and had only received it on January 28, 2016, with complainant's exhibit packet. Complainant established that respondent had been properly served at his address of record with the Board and that the First Amended Accusation, deemed controverted pursuant to Government Code section 11507, was based on respondent's surrender of his New York medical license nearly two years

¹ Business and Professions Code section 2236, subdivision (a), provides that "a physician and surgeon's certificate shall be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed."

before. Respondent's request to submit his direct testimony in writing was granted, and a second hearing date was to be arranged by complainant for cross-examination.

8. *Post-Hearing Motions and Briefs:* On February 8, 2016, respondent filed a Motion to Continue, summarizing the continuance request that was made and denied at the February 1, 2016 hearing. On February 10, 2016, complainant filed an opposition to this Motion. On February 18, 2016, a Case Status Order established dates for respondent to provide his written testimony and for complainant to coordinate available dates for a continued hearing with BOP, Lompoc. On February 22, 2016, respondent filed his Reply to complainant's opposition to the motion to continue.²

On February 26, 2016, respondent filed his "Amended Response to Case Status Order" (Amended Response), requesting that his prior motion be disregarded and submitting his written testimony in response to the First Amended Accusation. Respondent admitted that each cause for discipline in the First Amended Accusation was "accurate and true." Respondent requested that, as discipline, the Board suspend his license and his authority to supervise physician assistants, "for a period terminating upon the completion of his three (3) year term of Supervised Release as imposed by the U.S. District Court for the Central District of California...." Respondent also submitted his sworn Declaration, discussed below. (Exhibit C.)

On March 2, 2016, complainant filed her response to respondent's Amended Response and waived her right to cross-examine respondent, based upon his admissions. Complainant offered written closing argument and requested that respondent's license be revoked. A briefing schedule was established in the March 14, 2016 Case Status Order. In response to this Order, the following written arguments were received: "Respondent's Response to Complainant's Response to Respondent's Amended Response to Case Status Order" (marked for identification as Exhibit D), and Complainant's Reply to Respondent's Closing Arguments (marked for identification as Exhibit 10).

Respondent's Conviction

9. On March 6, 2013, in the United States District Court, Central District of California, Case No. CR12-415-CAS, respondent was found guilty of six counts of Health Care Fraud in violation of 18 U.S.C. section 1347, a felony, after a six-day jury trial. On July 22, 2013, respondent was sentenced to 42 months of incarceration on each count, to be served concurrently, followed by three years of supervised release on each count, to run concurrently. Respondent was ordered to pay restitution in the total amount of \$2,964,934 and a special assessment of \$600. All fines were waived.

10. As set forth in the Indictment, respondent treated patients at the Pacific Clinic (clinic) in Long Beach. Co-defendants included the clinic's manager, another treating physician, and the owners and operators of two durable medical equipment (DME) supply

² Respondent's pre-hearing continuance requests is contained in ALJ Exhibit 1.

companies. The DME suppliers purported to provide the following to Medicare beneficiaries: enteral nutrition, a liquid nutritional supplement sold under brand names (e.g., Ensure and Glucerna) and enteral nutrition feeding supply kits, including syringes to administer such nutrition to patients who received nutrition through a feeding tube rather than by mouth. The clinic had patient recruiters ("cappers") who brought Medicare beneficiaries to the clinic.

Between February 2005 and September 2008, respondent and the other treating physician examined and prescribed enteral nutrition and feeding kits to over 700 patients at the clinic, and signed Certificates of Medical Necessity (CMN), falsely certifying that the patients had medical conditions which justified the DME (i.e., that they could not ingest food orally and required a daily value of 1,600 calories in liquid nutrition). The clinic's operator then referred the patients to the two DME suppliers. Using the CMNs, the suppliers billed Medicare for the nutrition and kits and were paid, collectively, \$2,969,668. The physicians and clinic were reimbursed by Medicare for services to patients and the clinic received a \$300 kickback payment from the DME suppliers for each prescription. The DME suppliers only supplied to the Medicare beneficiaries a fraction of the enteral nutrition and supply kits for which it billed Medicare.

Respondent's Out-of-State License Discipline

11. On November 14, 1989, the New York State Education Department issued License Number 180715 to respondent, which authorized him to practice medicine in New York State.

12. On February 12, 2014, the New York State Board for Professional Medical Conduct issued a Statement of Charges against respondent in Case Number CO-13-03-1168-A), charging him with a violation of New York State Education Law section 6530 (9)(a)(ii), "by having been convicted of committing an act constituting a crime under federal law" The specific factual basis was respondent's felony Health Care Fraud conviction, described above. On this same date, the New York State Commissioner of Health issued an order suspending respondent's right to practice medicine immediately. The matter was referred for a hearing before a committee on professional conduct.

13. On June 20, 2014, the New York State Board for Professional Medical Conduct issued its Surrender Order (BPMC Case Number 14-156), striking respondent's name from the roster of physicians in the State. The Surrender Order adopted respondent's signed license surrender, dated May 23, 2014, by which he sought permission to surrender his license on the grounds that he "did not contest the First Specification" in the Statement of Charges; i.e., his violation of New York State Education Law section 6530 (9)(a)(ii), based on his federal conviction outlined above.

Respondent's Evidence

14. In his Declaration filed with the Amended Response, respondent apologized to the courts and accepted "full responsibility for [his] actions" that resulted in his conviction. Respondent explained that he was brought up in a Christian home in Ghana, West Africa, where his father was a respected ordained Presbyterian Minister. Respondent was taught to "help those in need, especially underprivileged ones, and not to cheat or take advantage of these people. This kind of training in my childhood motivated me to go into medicine where I am able to help heal the sick and save lives which has been demonstrated throughout my years of practicing medicine since 1986 when I finished my training in Internal Medicine and Geriatric Medicine."

Respondent explained that in approximately 2000, he was asked by a friend (and later co-defendant) to treat elderly patients who had multiple medical problems. Respondent's role was to supervise a physician assistant who saw the patients. At the time, respondent had a busy full-time job with Talbert Medical Group in Downey. He volunteered to help the Pacific Clinic. "Some mistakes were made on my part but I had no intention of defrauding Medicare or the Federal Government, and I deeply apologize for all that I was found guilty and sentence thereof [*sic*]."

Respondent noted that, prior to his incarceration, he was "actively involved" in his church in Anaheim, California, "feeding the homeless and ministering to them." While in prison, respondent has become "deeply involved in Bible Study groups, Prayer groups, and helping fellow inmates who need emotional support for lost [*sic*] of loved ones, as well as prayers for healing. My experience here has, through the strength and love of God, made me a far better person."

15. In his closing argument, respondent offered additional information about the circumstances surrounding his crime, in order to fix the degree of discipline. First, respondent indicated that he practiced medicine from 1986 through 2012, without any legal issues or lawsuits. Second, respondent noted that, since arriving in the United States on January 22, 1971, he has "committed no crime or been arrested for anything" until the present medical fraud case. Third, respondent asserted that he has paid his state and federal taxes every year since arriving in the United States. Fourth, respondent asserted that he has been "a good neighbor and active member of his community" before his incarceration on January 22, 2014. Fifth, respondent argued that his involvement with Pacific Clinic "was not due to making money but primarily was to take care of those elderly patients who needed medical assistance." He wrote:

The actual amount of money gained over a 4 year period (2005 -- 2009) was only \$150,000, which as proven by the government was but for his services provided to the clinic, with significant portions of the other for clinic expenses. The other 3 million dollars involved in the conspiracy proven, according to the records of the trials, to have gone to the other co-defendants.

Based on these circumstances, respondent requested an order of suspension or penalty less than revocation.

LEGAL CONCLUSIONS

1. *Purpose of Physician Discipline:* The purpose of the Medical Practice Act is to assure the high quality of medical practice. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) In exercising its disciplinary authority, the Board's highest priority is protection of the public. (Bus. & Prof. Code, § 2229.) Disciplinary proceedings protect the public from incompetent practitioners by eliminating those individuals from the roster of state-licensed professionals. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

2. *Burden and Standard of Proof:* To revoke or suspend respondent's medical license, complainant must establish the allegations and violations alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The requirement to produce clear and convincing evidence is a heavy burden, far in excess of the preponderance of evidence standard that is sufficient in most civil litigation. Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Applicable Statutes

3. Under Business and Professions Code section 490, subdivision (a), the Board may revoke or suspend a license "on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

4. Business and Professions Code section 2236, subdivision (a), provides that the "conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred."

5. Business and Professions Code section 2234 provides, *inter alia*, that the Board "shall take action against any licensee who is charged with unprofessional conduct."

6. Business and Professions Code section 2305 provides:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation,

suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.³

Legal Cause to Revoke License

7. Respondent has admitted that the First and Second Causes for Discipline in the First Amended Accusation are accurate and true. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Findings 9 and 10, respondent's conviction is substantially related to the qualifications, functions and duties of a licensed physician and surgeon, and constitutes unprofessional conduct. In finding respondent guilty of all six counts of health care fraud, the jury necessarily determined, beyond a reasonable doubt, that respondent "knowingly and willfully" participated in a scheme to defraud the United States government by falsely certifying that his patients had medical conditions which required treatment by enteral nutrition and that this nutrition had to be administered by use of enteral nutrition feeding supply kits.⁴ A conviction for health care fraud is a proper basis for revocation. (Cf. *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App. 3d 293, 301-303.) Legal cause is established to revoke respondent's license under Business and Professions Code sections 490, subdivision (a); 2236, subdivision (a), and 2234.

8. Respondent has admitted that the Third Cause for Discipline in the First Amended Accusation is accurate and true. Respondent's surrender of his New York medical license was the direct result of charges brought against him arising from his conviction. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Findings 11 through 13, respondent's license is subject to discipline under Business and Professions Code section 2305 based on his out-of-state discipline.

9. *Appropriate Discipline:* Respondent has consistently requested that his license be disciplined by suspension rather than by revocation and, in closing argument,

³ This action is also authorized by Business and Professions Code section 141, subdivision (a).

⁴ 18 U.S.C. section 1347, subdivision (a), provides: "Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice--(1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under this title or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined under this title, or imprisoned for any term of years or for life, or both."

requested that his license suspension terminate upon completion of his post-incarceration, three-year supervised release (parole). Business and Professions Code section 2227, subdivision (a), provides various forms of discipline, including by having "his or her right to practice suspended for a period *not to exceed one year* upon order of the board." (Italics supplied.)

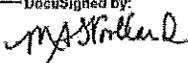
Based on a review of the record as a whole and a review of the Manual of Model Disciplinary Orders and Disciplinary Guidelines, 11th Edition (2011) (Guidelines), revocation is the appropriate remedy. In pertinent part, the Guidelines recommend: (1) a minimum penalty of stayed revocation with five years of probation with conditions, and a maximum of revocation for general unprofessional conduct (Bus. & Prof. Code, § 2234); and (2) for conviction of a crime "substantially related to the qualifications, functions or duties of a physician and surgeon and arising from or occurring during patient care, treatment, management or billing," a minimum penalty of stayed revocation, one year suspension, and at least seven years of probation and a maximum penalty of revocation. (Bus. & Prof. Code, § 2236.) For disciplinary action taken by other states, the penalty range is the same as for a similar offense in California. (Bus. & Prof. Code, §§141, subd. (a), 2305.) In this case, three separate causes for discipline have been established by clear and convincing evidence.

A stayed revocation with probation is not appropriate. Respondent minimized the seriousness of his conduct which extended over multiple years. Respondent remains incarcerated for serious offenses which demonstrate a lack of honesty and integrity, and which arose directly from his conduct as a physician performing professional duties. Upon release from prison, respondent will be on parole for three years. Respondent will be able to apply for reinstatement of his license in the future, upon a showing that he is rehabilitated from the conduct that resulted in his felony conviction.⁵

ORDER

Physician's and Surgeon's Certificate Number 48589 issued to respondent AUGUSTUS K.A. OHEMENG, M.D., is hereby REVOKED, pursuant to Legal Conclusions 1 through 9.

DATED: May 10, 2016

DocuSigned by:

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MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

⁵ Pursuant to Business and Professions Code section 2307, a person whose license has been revoked may file a petition for reinstatement after at least three years from the date of revocation. (Bus. & Prof. Code, § 2307, subd. (b)(1).)

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO October 26 20 15
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9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the First Amended Accusation Against:

Case No. 11-2012-223147

14 **AUGUSTUS K. A. OHEMENG, M.D.**
8244 Galaxy Circle
15 Buena Park, CA 90620

OAH No. 2015030959

**FIRST AMENDED
ACCUSATION**

16
17 Physician's and Surgeon's Certificate No. A 48589

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation solely in
23 her official capacity as the Executive Director of the Medical Board of California, Department of
24 Consumer Affairs.

25 2. On or about August 21, 1990, the Medical Board of California issued Physician's and
26 Surgeon's Certificate Number A 48589 to Augustus K. A. Ohemeng, M.D. (Respondent). The
27 certificate is delinquent, having expired on April 30, 2014, and is suspended as a result of an
28 Automatic Suspension Order issued on February 25, 2014.

1 JURISDICTION

2 3. This First Amended Accusation is brought before the Medical Board of California
3 (Board),¹ Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 2227 of the Code provides that a licensee who is found guilty under the
6 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
7 one year, placed on probation and required to pay the costs of probation monitoring, or such other
8 action taken in relation to discipline as the Board deems proper.

9 5. Section 2234 of the Code, states:

10 "The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 "(a) Violating or attempting to violate, directly or indirectly, assisting in or
14 abetting the violation of, or conspiring to violate any provision of this chapter.

15 "(b) Gross negligence.

16 "(c) Repeated negligent acts. To be repeated, there must be two or more
17 negligent acts or omissions. An initial negligent act or omission followed by a separate and
18 distinct departure from the applicable standard of care shall constitute repeated negligent acts.

19 "(1) An initial negligent diagnosis followed by an act or omission medically
20 appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

21 "(2) When the standard of care requires a change in the diagnosis, act, or
22 omission that constitutes the negligent act described in paragraph (1), including, but not limited
23 to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs
24 from the applicable standard of care, each departure constitutes a separate and distinct breach of
25 the standard of care.

26 ¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008,
27 provides that, unless otherwise expressly provided, the term "[B]oard" as used in the Medical Practice Act refers to
28 the Medical Board of California. References to the "Division of Medical Quality" and "Division of Licensing" set
forth in the Medical Practice Act are also referable to the Medical Board of California.

1 "(d) Incompetence.

2 "(e) The commission of any act involving dishonesty or corruption which is
3 substantially related to the qualifications, functions, or duties of a physician and surgeon.

4 "(f) Any action or conduct which would have warranted the denial of a
5 certificate.

6 "(g) The practice of medicine from this state into another state or country without
7 meeting the legal requirements of that state or country for the practice of medicine. Section 2314
8 shall not apply to this subdivision. This subdivision shall become operative upon the
9 implementation of the proposed registration program described in Section 2052.5.

10 "(h) The repeated failure by a certificate holder, in the absence of good cause, to
11 attend and participate in an interview by the board. This subdivision shall only apply to a
12 certificate holder who is the subject of an investigation by the board."

13 6. Section 2236 of the Code states:

14 "(a) The conviction of any offense substantially related to the qualifications,
15 functions, or duties of a physician and surgeon constitutes unprofessional conduct within the
16 meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be
17 conclusive evidence only of the fact that the conviction occurred.

18 "(b) The district attorney, city attorney, or other prosecuting agency shall notify
19 the Division of Medical Quality of the pendency of an action against a licensee charging a felony
20 or misdemeanor immediately upon obtaining information that the defendant is a licensee. The
21 notice shall identify the licensee and describe the crimes charged and the facts alleged. The
22 prosecuting agency shall also notify the clerk of the court in which the action is pending that the
23 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds
24 a license as a physician and surgeon.

25 "(c) The clerk of the court in which a licensee is convicted of a crime shall,
26 within 48 hours after the conviction, transmit a certified copy of the record of conviction to the
27 board. The division may inquire into the circumstances surrounding the commission of a crime in
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1 order to fix the degree of discipline or to determine if the conviction is of an offense substantially
2 related to the qualifications, functions, or duties of a physician and surgeon.

3 "(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
4 deemed to be a conviction within the meaning of this section and Section 2236.1. The record of
5 conviction shall be conclusive evidence of the fact that the conviction occurred."

6 7. Section 2236.1 of the Code states:

7 "(a) A physician and surgeon's certificate shall be suspended automatically during
8 any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of
9 whether the conviction has been appealed. The Division of Medical Quality shall, immediately
10 upon receipt of the certified copy of the record of conviction, determine whether the certificate of
11 the physician and surgeon has been automatically suspended by virtue of his or her incarceration,
12 and if so, the duration of that suspension. The division shall notify the physician and surgeon of
13 the license suspension and of his or her right to elect to have the issue of penalty heard as
14 provided in this section.

15 "(b) Upon receipt of the certified copy of the record of conviction, if after a
16 hearing it is determined therefrom that the felony of which the licensee was convicted was
17 substantially related to the qualifications, functions, or duties of a physician and surgeon, the
18 Division of Medical Quality shall suspend the license until the time for appeal has elapsed, if no
19 appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has
20 otherwise become final, and until further order of the division. The issue of substantial
21 relationship shall be heard by and administrative law judge from the Medical Quality Panel sitting
22 alone or with a panel of the division, in the discretion of the division.

23 "(c) Notwithstanding subdivision (b), a conviction of any crime referred to in
24 Section 2237, or a conviction of Section 187, 261, 262 or 288 of the Penal Code, shall be
25 conclusively presumed to be substantially related to the qualifications, functions, or duties of a
26 physician and surgeon and no hearing shall be held on this issue. Upon its own motion or for
27 good cause shown, the division may decline to impose or may set aside the suspension when it
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1 appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and
2 confidence in the medical profession.

3 “(d) (1) Discipline may be ordered in accordance with Section 2227, or the
4 Division of Licensing may order the denial of the license when the time for appeal has elapsed,
5 the judgment of conviction has been affirmed on appeal, or an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
9 indictment.

10 “(2) The issue of penalty shall be heard by an administrative law judge from the
11 Medical Quality Panel sitting alone or with a panel of the division, in the discretion of the
12 division. The hearing shall not be had until the judgment of conviction has become final or,
13 irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting
14 probation has been made suspending the imposition of sentence; except that a licensee may, at his
15 or her option, elect to have the issue of penalty decided before those time periods have elapsed.
16 Where the licensee so elects, the issue of penalty shall be heard in the manner described in this
17 section at the hearing to determine whether the conviction was substantially related to the
18 qualifications, functions, or duties of a physician and surgeon. If the conviction of a licensee who
19 has made this election is overturned on appeal, any discipline ordered pursuant to this section
20 shall automatically cease. Nothing in this subdivision shall prohibit the division from pursuing
21 disciplinary action based on any cause other than the overturned conviction.

22 “(e) The record of the proceedings resulting in the conviction, including a
23 transcript of the testimony therein, may be received in evidence.

24 “(f) The other provisions of this article setting forth a procedure for the
25 suspension or revocation of a physician and surgeon's certificate shall not apply to proceedings
26 conducted pursuant to this section.”

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1 8. Section 490 of the Code states:

2 "(a) In addition to any other action that a board is permitted to take against a
3 licensee, a board may suspend or revoke a license on the ground that the licensee has been
4 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
5 of the business or profession for which the license was issued.

6 "(b) Notwithstanding any other provision of law, a board may exercise any
7 authority to discipline a licensee for conviction of a crime that is independent of the authority
8 granted under subdivision (a) only if the crime is substantially related to the qualifications,
9 functions, or duties of the business or profession for which the licensee's license was issued.

10 "(c) A conviction within the meaning of this section means a plea or verdict of
11 guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to
12 take following the establishment of a conviction may be taken when the time for appeal has
13 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting
14 probation is made suspending the imposition of sentence, irrespective of a subsequent order under
15 the provisions of Section 1203.4 of the Penal Code.

16 "(d) The Legislature hereby finds and declares that the application of this section
17 has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142
18 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and
19 regulations in question, resulting in potential harm to the consumers of California from licensees
20 who have been convicted of crimes. Therefore, the Legislature finds and declares that this section
21 establishes an independent basis for a board to impose discipline upon a licensee, and that the
22 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
23 to, but rather are declaratory of, existing law."

24 9. Section 2305 of the Code provides, in part, that the revocation, suspension, or other
25 discipline, restriction or limitation imposed by another state upon a license to practice medicine
26 issued by that state, that would have been grounds for discipline in California under the Medical
27 Practice Act, constitutes grounds for discipline for unprofessional conduct.

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1 concurrently. He is then to have supervised probation for the term of three years. Restitution was
2 ordered in the amount of \$2,964,934.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct)

5 14. Respondent is subject to disciplinary action under Code section 2234 in that he has
6 engaged in unprofessional conduct. The circumstances are as follows:

7 15. The facts and circumstances alleged in paragraphs 11 through 13 above are
8 incorporated here as if fully set forth.

9 **THIRD CAUSE FOR DISCIPLINE**

10 (Discipline, Restriction, or Limitation Imposed by Another State)

11 16. On June 20, 2014, the New York State Board for Professional Medical Conduct
12 issued a Surrender Order in a case entitled "In the Matter of Augustus Ohemeng, M.D." The
13 Surrender Order contains factual findings that Respondent was found guilty of six Counts of
14 Health Care Fraud in violation of 18 USC §§ 1347, felonies. Respondent surrendered his New
15 York license, and agreed that in the event he seeks re-licensure in New York, the New York State
16 Board for Professional Medical Conduct may deny his application. He also agreed to pay costs.
17 Copies of the Final Decision and Order and Stipulation issued by the New York State Board for
18 Professional Medical Conduct are attached as Exhibit A.

19 17. The facts and circumstances alleged in paragraphs 11 through 16 above are
20 incorporated here as if fully set forth. Respondent's conduct and the action of the New York
21 State Board for Professional Medical Conduct as set forth above in paragraph 16 constitutes
22 unprofessional conduct within the meaning of section 2305 and conduct subject to discipline
23 within the meaning of section 141(a).

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Medical Board of California issue a decision:

27 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 48589,
28 issued to Augustus K. A. Ohemeng, M.D.;

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- 2. Revoking, suspending or denying approval of Augustus K. A. Ohemeng, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 3. Ordering Augustus K. A. Ohemeng, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and
- 4. Taking such other and further action as deemed necessary and proper.

DATED: October 26, 2015


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SA2014312360
32205643.docx

EXHIBIT A



Department of Health

ANDREW M. CUOMO
Governor

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

SALLY DRESLIN, M.S., R.N.
Executive Deputy

August 04, 2015

RECEIVED
MEDICAL BOARD OF NY
AUG 19 11 14 51
COMPLAINT UNIT

Cyndie Kouza, Management Services Tech
Medical Brd of California, Discipline Coordination Unit
Suite 1200, 2005 Evergreen Street
Sacramento, CA 95815-3831

Re: Augustus KwadwoAlta Ohemeng, MD
NYS Medical License # 180715

The Office of Professional Medical Conduct (OPMC) has received your information request. Attached is a certified copy of the documents regarding the action taken against the aforementioned licensee's New York State medical license.

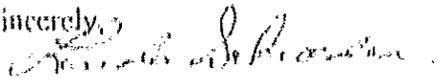
OPMC encourages use of our web page for credential verification. The information published on the website regarding disciplined physicians and physician assistants dates back to 1990 and may be downloaded. Actions dated earlier than 1990 are not on the website, but are available in hard copy. The web address for the Office of Professional Medical Conduct (OPMC) is:

<http://www.nyhealth.gov/nysdoh/opmc/main.htm>

To search for licensee information regarding actions taken during and after 1990, click on the Physician Search button on both the current and next page. The search feature offers searches by licensee name, license number, effective date of the action or any action updates for a period of time. If the search reveals no record of an action, then Search Results - 0 Documents Found will appear on the screen.

Opening a Board Order requires a special reader such as Adobe Acrobat. This reader is free and can be downloaded by accessing www.Adobe.com. To print an order, use the print button that is part of the reader not the print button on your browser.

Sincerely,


Linda Schroeder
Credentialing Clerk
Office of Professional Medical Conduct



Department of Health

ANDREW M. CUOMO
Governor

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

SALLY DRESLIN, M.S., R.N.
Executive Deputy

CERTIFICATION

STATE OF NEW YORK)
 ss:
COUNTY OF RENSSELAER)

Douglas P. Mackey, being duly sworn, deposes and says:

I am with the Office of Professional Medical Conduct, New York State Department of Health. I am an officer having legal custody of the records of the Office of Professional Medical Conduct. I, hereby, certify that the enclosed documents are true copies of documents from the files of the Office of Professional Medical Conduct in the case of :

Augustus KwadwoAtta Ohemeng, MD
NYS medical license # 180715

Douglas P. Mackey
Program Director
Office of Professional Medical Conduct

Sworn to before me this 5th day of August, 2015

Kathleen S. Roy
Notary Public, State of New York
Qualified in Rensselaer County
Commission expires August 31, 2018
No. 4765175

Public

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT EPNC No. 14-32

IN THE MATTER

OF

AUGUSTUS OHEMENG, M.D.
CO-13-03-1188-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: Augustus Ohemeng, M.D.
REDACTED

Augustus Ohemeng, M.D.
REDACTED

The undersigned, Nirav R. Shah, M.D., M.P.H., 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 AUGUSTUS OHEMENG, M.D., Respondent, licensed to practice medicine in New York State on November 14, 1989, by license number 180715, has been found guilty of committing an act constituting a felony under federal 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), that effective immediately, AUGUSTUS OHEMENG, M.D., 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.

ANY PRACTICE OF MEDICINE IN VIOLATION OF THIS COMMISSIONER'S ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(23) 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 §330 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 23rd day of April, 2014 at 10:30 a.m., at Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, at the offices of the New York State Health Department and at such other adjourned dates, times and places as the committee may direct. Respondant 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 who shall be an attorney admitted to practice in New York state. Respondent has the right to produce witnesses and evidence on his behalf, to file or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. The licensee may file a brief and affidavits with the Committee on Professional Conduct. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon receipt of the notice will provide at no charge, a qualified interpreter of the deaf to attend the proceedings to, and the testimony of, any deaf party.

The hearing will proceed whether or not Respondent is present at the hearing scheduled by this notice, and adjourned dates certain and adjourned requests are hereby summarily granted. Requests for adjournments may be made in writing to the New York State Department of Health, 150 Broadway, Albany, New York 12204.

Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING 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
Feb 12, 2014

REDACTED

NIRAV R. SHAH, M.D., M.P.H.
Commissioner of Health
New York State Department of Health

Inquiries should be addressed to:

Jude B. Mulvey
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, New York 12257
(518) 473-4362

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

IN THE MATTER
OF
AUGUSTUS OHEMENG, M.D.
CO-13-03-1168-A

STATEMENT
OF
CHARGES

AUGUSTUS OHEMENG, M.D., Respondent, was authorized to practice medicine in New York State on November 14, 1989, by the issuance of license number 180715 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 22, 2013, in the United States District Court, Central District of California, Respondent was found guilty, after a trial, of six counts of Health Care Fraud in violation of 18 USC §§ 1347, a felony. He was sentenced to forty-two (42) months imprisonment, restitution in the amount of \$2,964,934.00, \$500 special assessment fee and upon release from incarceration shall serve a supervised release for three years.

SPECIFICATION

Respondent violated New York State Education Law §6530 (9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law, in that Politician charges.

1. The facts in Paragraph A.

DATE: *Sept. 17*, 2014
Albany, New York

REDACTED
MICHAEL A. GREGG
Acting Deputy Comptroller
Division of Professional Medical Conduct

NEW YORK
state department of
HEALTH

Public

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

June 23, 2014

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Augustus K. Ohemeng, M.D.
#62815-112
FPC/South Camp
3705 West Farm Road
Lompoc, CA 93436

Re: License No. 180715

Dear Dr. Ohemeng:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 14-156. This order and any penalty provided therein goes into effect June 30, 2014.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: c/o Physician Monitoring Unit, NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719.

If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. Our office is unable to store framed licenses.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719, telephone # (518)402-0855.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

IN THE MATTER
OF
AUGUSTUS OHEMENG, M.D.

SURRENDER
ORDER

Upon the application of AUGUSTUS OHEMENG, M.D. to Surrender his license as a physician in the State of New York, which is made a part of this Surrender Order, it is

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

ORDERED, that Respondent's name be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Surrender Order, either by first class mail to Respondent at the address in the attached Surrender of License application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney,

Whichever is first.

SO ORDERED.

DATE: 6/20/2014

REDACTED
ARTHUR S. FINGERER, M.D.
Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
AUGUSTUS OHEMENG, M.D.

SURRENDER
OF
LICENSE
AND
ORDER

AUGUSTUS OHEMENG, M.D., represents that all of the following statements are true:

That on or about November 14, 1989 I was licensed to practice as a physician in the State of New York, and issued License No. 180715 by the New York State Education Department.

My current address is REDACTED and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A"; which is attached to and part of this Surrender of License.

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York on the grounds that I do not contest the First Specification.

I ask the Board to accept my Surrender of License, and I agree to be bound by all of the terms set forth in attached Exhibit "B".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged; this application shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board accepts my Surrender of License, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender Order, this agreement, and all attached exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website(s). OPMC shall report this action to the National Practitioner Data Bank, the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I ask the Board to accept this Surrender of License, which I submit of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

The undersigned agree to Respondent's attached Surrender of License and Order and to its proposed penalty, terms and conditions.

DATE: 4/16/14

REDACTED

JUDE B. MULVEY ESQ.
Associate Attorney
Bureau of Professional Medical Conduct

DATE: 6/20/14

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

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

IN THE MATTER
OF
AUGUSTUS OHMENG, M.D.
CO-13-03-1168-A

STATEMENT
OF
CHARGES

AUGUSTUS OHMENG, M.D., Respondent, was authorized to practice medicine in New York State on November 14, 1989, by the issuance of license number 180715 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 22, 2013, in the United States District Court, Central District of California, Respondent was found guilty, after a trial, of six counts of Health Care Fraud in violation of 18 USC §§ 1347, a felony. He was sentenced to forty-two (42) months incarceration, restitution in the amount of \$2,964,934.00, \$600 special assessment fee and upon release from incarceration shall serve a supervised release for three years.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED Feb. 12, 2014
Albany, New York

REDACTED
MICHAEL A. FISER
Acting Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Requirements for Closing a Medical Practice Following a
Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact person who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within 15 days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender Licensee's DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment for up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230 a, which include fines of up to \$10,000 for each specification of charges.

of which the Licensee is found guilty, and may include revocation of a suspended license.