

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Board of Registration in Medicine,**  
Petitioner,

No. RM-23-0035

Dated:

**APR 12 2023**

v.

**Tae Gyun Kim, M.D.,**  
Respondent.

**Appearance for Petitioner:**

Erik R. Bennett, Esq.  
Wakefield, MA 01880

**Appearance for Respondent:**

B. Adam Seidler, Esq.  
New York, NY

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF RECOMMENDED DECISION**

Discipline may be imposed upon the respondent physician, who committed Medicare fraud and was disciplined for that crime in another jurisdiction.

**RECOMMENDED DECISION**

**Procedural Posture**

The Board of Registration in Medicine commenced disciplinary proceedings against Dr. Tae Gyun Kim and referred the matter to DALA. Represented by counsel, Dr. Kim failed to file an answer, and further failed to show cause for that omission. 801 C.M.R. § 1.01(6)(d)(2), (7)(g)(2). An order dated April 3, 2023 entered his default. *See* G.L. c. 30A, § 10. Complaint counsel moved for a recommended decision, offering a memorandum of law in support of the statement of allegations' asserted bases for discipline.

### Findings of Fact

When a respondent defaults, the petitioner's well-pleaded allegations of fact are deemed true. *See Ceruolo v. Garcia*, 92 Mass. App. Ct. 185, 191 (2017); *Eagle Fund, Ltd. v. Sarkans*, 63 Mass. App. Ct. 79, 83 n.8 (2005). I therefore find as fact paragraphs nos. 1-11 of the statement of allegations. Their gist is that Dr. Kim committed Medicare fraud, pleaded guilty to that crime in federal court, and was disciplined in connection with his conviction by the New York State Board for Professional Misconduct.

### Rulings of Law

On the basis of the facts adopted and summarized *supra*, I rule as follows:

1. Dr. Kim has been disciplined in another jurisdiction for reasons "substantially the same" as those prescribed by the statute and regulations governing the practice of medicine in Massachusetts. 243 C.M.R. § 1.03(5)(a)(12). Indeed, a variety of board regulations would authorize discipline on the basis of a Medicare fraud conviction. See especially *id.* § 1.03(7) (conviction of any crime); *id.* § 1.03(13) (violation of the board's Medicare regulation).
2. Dr. Kim "has been convicted of a criminal offense which reasonably calls into question his ability to practice medicine." G.L. c. 112, § 5, 8th para., (g). It is true that Medicare fraud does not revolve around the quality of the treatment provided to any patients. Nonetheless, the Supreme Judicial Court has stated that:

The practice of modern medicine involves financial management, as well as the care and treatment of patients. A substantial portion of persons seeking medical assistance are assured that a portion of their costs will be paid by a third party. . . . [A]n intentional misdeed relating to third-party payors reflects adversely on a physician's fitness to practice medicine.

*Levy v. Board of Registration & Discipline in Med.*, 378 Mass. 519, 526-27 (1979) (citations omitted). *See also Feldstein v. Board of Registration in Med.*, 387 Mass. 339, 341 (1982).

3. Dr. Kim has engaged in behavior that demonstrates a lack of good moral character and tends to undermine public confidence in the integrity of the medical profession. *See Raymond v. Board of Registration in Med.*, 387 Mass. 708, 713 (1982). Although the borderlines of the conduct that satisfies this predicate for discipline are not crystal clear, all criminal conduct qualifies, because such conduct is presumptively “antithetical to a commitment to preserve life, alleviate suffering, and restore health.” *Id.* at 712. *See BORIM v. Pedro*, No. RM-18-622, at \*5-7 (DALA June 28, 2021, *adopted*, BORIM Dec. 16, 2021).

### Conclusion

The board may impose disciplinary measures on Dr. Kim in connection with the bases of discipline described *supra*.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate