



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
October 14, 2008

**OPMC TIGHTENS CONFIDENTIALITY RULES FOLLOWING
INSPECTOR GENERAL'S REPORT**

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General's Office determined that Dr. George Harrington, a Medical Coordinator for the Office of Professional Medical Conduct (OPMC) of the Department of Health (DOH), had repeated ex parte telephone conversations with Louis Sidoti, a physician who was the subject of OPMC disciplinary charges, in possible violation of Public Officers Law § 74(3)(f) and (h). Based upon a review of Harrington's actions and existing OPMC policies, the Inspector General recommended that OPMC's policy on confidentiality be revised to clearly prohibit any ex parte conversations regarding a pending OPMC proceeding between OPMC employees involved in the investigations or disciplinary process relating to that proceeding and the medical professionals under investigation. OPMC advised the Inspector General that it has adopted this recommendation.

ALLEGATIONS

On July 23, 2007, the Inspector General's Office received a complaint alleging that Dr. Harrington, an OPMC Medical Coordinator involved in physician disciplinary proceedings, abused his authority by misleading Louis Sidoti, a former student and protégé of Dr. Harrington's, during their several conversations while medical misconduct charges were pending against Sidoti. It was alleged that, during their discussions, Harrington insisted that Sidoti "fight" the charges. Sidoti claimed that, absent Harrington's insistence, Sidoti would have accepted a plea offer that included a one-year suspension of his medical license. Instead, Sidoti ignored his attorneys' advice and fought the charges before the Board of Professional Medical Conduct (Board). After a hearing, the Board revoked Sidoti's medical license.

SUMMARY OF INVESTIGATION

1. Background

OPMC's and the Board's authority to investigate and adjudicate complaints of professional medical misconduct against New York's 60,000 licensed physicians and other medical professionals is derived from Public Health Law § 230. OPMC serves as

the staff to the Board, which is comprised of approximately 200 physician and lay members appointed by the DOH Commissioner and the State Board of Regents.

Once OPMC receives a complaint involving a physician, it conducts a preliminary review of the complaint to determine whether it falls within OPMC's jurisdiction and whether it reasonably appears to merit further investigation. When a full investigation is warranted, the appropriate OPMC regional office conducts the investigation, which typically includes a review of the medical records and interviews of the patient, any witnesses, and the subject of the complaint. A medical review is conducted of each investigation consistent with the complexity of the medical issue(s). If there is no evidence to support the allegation of misconduct, the case is closed. Where there is some proof of misconduct, the case is presented to an Investigation Committee.

The Investigation Committee may dismiss the matter; request additional investigation; order non-disciplinary warnings or consultations; or order the filing of formal charges, thereby initiating a formal hearing before the Hearing Committee. The proceedings before the Hearing Committee are similar to a trial. Both parties present evidence and call witnesses, and the subject is usually represented by an attorney. The Hearing Committee then renders a decision, which may be appealed to the Administrative Review Board. The penalties for a finding of misconduct can include license suspension or revocation, restrictions on practice areas, censure, or reprimand. Physicians can also be fined, or required to perform community service or pursue additional education.

Dr. Harrington is an OPMC Medical Coordinator and, as such, he is responsible for reviewing medical charts and records involving investigative cases concerning medical misconduct against medical doctors and physician assistants. Dr. Harrington is also a member of several OPMC committees, including Investigation Committees.

2. Investigation into the Sidoti allegations

In August 2007, the Inspector General's Office reviewed the OPMC file and interviewed OPMC officials regarding Sidoti's case with OPMC. In June 2003, OPMC had received a complaint of medical misconduct against Sidoti following the death of one of his patients. An investigation was conducted, and in May of 2005, the case against Sidoti was presented to the Investigation Committee assigned to his case. The Investigation Committee determined that a hearing should be held and also recommended "consent parameters," the penalty the IC considered to be appropriate for the misconduct presented. Under the consent parameters offered to Sidoti, he could have continued practicing medicine. However, Sidoti rejected these consent parameters and all subsequent settlement offers, including a one-year restriction in emergency medicine, offered on the eve of the hearing, which would have permitted Sidoti to continue practicing other areas of medicine. In August 2006, after a hearing, the Board revoked Sidoti's medical license. He lost an appeal of the decision in December 2006.

In September 2007, the Inspector General's Office interviewed Sidoti, who explained that during the pendency of the OPMC investigation he first sought advice from another physician who immediately informed him that she could not discuss his case because she works part-time for OPMC as a medical advisor. Despite being

informed that OPMC personnel should not speak with him regarding his case, in September 2005, Sidoti telephoned Dr. Harrington, knowing that Dr. Harrington also worked for OPMC. Sidoti said that between the first telephone call, which occurred in September 2005, and October 2006, they had approximately 12 telephone conversations.

Sidoti stated that he telephoned Dr. Harrington at his home on the night before each hearing date and Dr. Harrington gave him advice regarding the OPMC settlement process. According to Sidoti, Dr. Harrington insisted that he not settle under any circumstances. Furthermore, Dr. Harrington convinced him that if he accepted OPMC's offer, he would retain his medical license, but he would be "blackballed" by insurance companies and would be unable to find work. Sidoti claimed that had Dr. Harrington not given him this advice, he would have listened to his attorneys' recommendation to accept the one-year restriction in emergency medicine.

Following the resolution of the proceedings against Sidoti, in October 2007, a telephone conversation between Sidoti and Dr. Harrington was recorded. Nothing Dr. Harrington said supports Sidoti's allegation that Dr. Harrington exerted undue influence by insisting that Sidoti not accept a plea under any circumstances, but the recorded call does reveal that Dr. Harrington and Sidoti had in some manner previously discussed Sidoti's pending case and the options available to him. In this call, Dr. Harrington said to Sidoti, "I said it all along, if you were right and pure and innocent then stand your ground and if you weren't, then you're out." Dr. Harrington later explained: "As far as I know, the way you phrased things to me, it would appear that you had a good chance. That's all I can say because I'm not a lawyer." It does not appear from their recorded conversation as though Dr. Harrington divulged information pertaining to OPMC's investigation.

In November 2007 and again in January 2008, the Inspector General's Office interviewed Dr. Harrington. He readily acknowledged having several telephone conversations with Sidoti during the course of Sidoti's proceedings before OPMC and the Board. Dr. Harrington conceded that through his employment with OPMC he had learned about the allegations against Sidoti. Additionally, Dr. Harrington was present during the Investigation Committee's meetings during which Sidoti's case was discussed. Yet, Dr. Harrington maintained that he never discussed the details of Sidoti's case or any information he obtained as the result of his position with OPMC. Dr. Harrington stated that he only informed Sidoti about OPMC's disciplinary process. Specifically, Dr. Harrington stated that he advised Sidoti: "If you're guilty, work some kind of a deal, if you're not, fight it."

Dr. Harrington insisted that providing this type of information to Sidoti did not violate OPMC's oath of confidentiality, which he signed in February 1999. This oath prohibits any OPMC employee from discussing "the content of OPMC investigator material and/or computer data with any person outside the Department of Health unless such information is discussed or conveyed in pursuit of the official duties of the investigation." Additionally, under Public Health Law § 230(10)(a)(v), OPMC investigatory files are "confidential and not subject to disclosure at the request of any person, except as provided by law in a pending disciplinary action or proceeding." Dr. Harrington was adamant that their telephone conversations were not prohibited because he did not provide Sidoti with any information about OPMC's actual investigation of Sidoti.

Dr. Harrington's assertion that he merely described OPMC's process to Sidoti is belied by the number of telephone conversations between the two. As noted above Dr. Harrington had several conversations with Sidoti over a one-year period. According to Sidoti, many of the telephone calls took place after the disciplinary process was underway, when Sidoti was represented by counsel. Dr. Harrington's assertion that Sidoti was seeking clarification on OPMC's process is questionable, given Sidoti easily could have obtained this information from his attorneys. Furthermore, both Dr. Harrington's statements during his interview and the recorded telephone conversation establish that Dr. Harrington generally advised Sidoti under what circumstances he should plead guilty and accept a settlement and, at a minimum, broached topics beyond mere procedure.

While Dr. Harrington's "advice" may not have violated the specific and limited language in OPMC's oath of confidentiality or the Public Health Law, it potentially violated Public Officers Law § 74(3)(f). That statute provides that:

An officer or employee of a state agency ... should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

Dr. Harrington's activities also implicate Public Officers Law § 74(3)(h), which states: "An officer or employee of a state agency ... should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust." Interpreting these sections, the New York State Commission on Public Integrity (formerly the Ethics Commission) has long-held that a public servant's "actions and affiliations must be above reproach" even if no conflict of interest exists. Public employees should not take part in any associations that give the appearance of favoritism or private gain, or which "shake the public's confidence."

FINDINGS AND RECOMMENDATIONS

Although there is insufficient evidence to substantiate the allegation that Dr. Harrington asserted undue influence over Louis Sidoti during the course of medical disciplinary proceedings, the Inspector General's Office found that Dr. Harrington may have violated Public Officers Law § 74(3)(f) and (h). Dr. Harrington's repeated ex parte telephone conversations with Sidoti while these disciplinary charges were pending could give a "reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties." Dr. Harrington's interactions with Sidoti further "raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust." The Inspector General's Office therefore forwards this matter to the Commission on Public Integrity for its review.

The investigation did not uncover any violation of OPMC's policy or its oath of confidentiality, which prohibit OPMC personnel from divulging confidential information contained in its investigatory files, but make no mention of ex parte communications with medical professionals under investigation. Nevertheless, such ex parte communications,

even if innocuous in content, create the appearance of a conflict of interest or other impropriety. Therefore, the Inspector General recommended that OPMC revise its confidentiality oath to clearly prohibit OPMC personnel involved in an investigation or disciplinary proceeding from having any ex parte communications with the subject of the investigation or proceeding regarding that proceeding.

In response to the Inspector General's recommendations, OPMC advised that it revised its oath of confidentiality to explicitly prohibit ex parte conversations between OPMC employees/contractors and the subjects of OPMC actions and to require employees/contractors to report any such contacts. All OPMC staff members were required to review and sign the revised oath by July 1, 2008.

OPMC also advised that training materials for all staff, including medical coordinator, including medical coordinators, are being revised to reinforce staff responsibilities to identify and disclose potential conflicts. Specifically, staff will be required to immediately disclose, upon the assignment of every case, any relationship they may have with the subject of the complaint and/or other parties involved. Upon notification of any such relationship, management will review the facts of the situation to determine whether the case should be reassigned. Similarly, medical coordinators who participate in investigation committees or preparatory meetings will be required to make the same disclosures about the cases being presented to the committees. Upon such disclosure, the OPMC Director in conjunction with the Chief Counsel of the Bureau of Professional Medical Conduct will determine if the medical coordinator should be recused from case discussions.

Further, OPMC advised that it is reviewing the conduct of Dr. Harrington and will take whatever actions deemed appropriate based on the results of the review.