



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 17, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hannah E.C. Moore, Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

Amy T. Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 720
Garden City, New York 11530

Kakarla Chalam, M.D.
Loma Linda University College of Medicine
Department of Ophthalmology
11370 Anderson Street, Suite 2025
Loma Linda, California 92354

RE: In the Matter of Kakarla Chalam, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-309) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

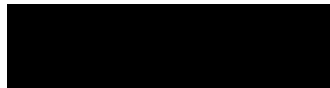
James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board.

Six copies of all papers must also be sent to the attention of Judge Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

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

COPY

IN THE MATTER

OF

KAKARLA CHALAM, M.D.

DETERMINATION

AND

**ORDER
19-309**

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct (“the Department”). A Notice of Referral Proceeding (“NORP”) and Statement of Charges (“SOC”), both dated July 2, 2019, were served upon Kakarla Chalam, M.D. (“Respondent”), and Respondent filed an Answer to the SOC on October 17, 2019. The NORP and SOC are attached to this Determination and Order as Appendix 1, and the Answer as Appendix 2. A hearing, pursuant to N.Y. Public Health Law (“PHL”) §230 and New York State Admin. Proc. Act §§301-307 and 401, was held on October 23, 2019, at the Department’s offices at 90 Church Street, New York, New York.

C. Deborah Cross, M.D., Chair, David M. Kirshy, M.D., and Michael Colon, Esq., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (“Committee”) in this matter. Ann H. Gayle, Administrative Law Judge, served as the administrative officer. The Department appeared by Hannah E.C. Moore, Assistant Counsel. Respondent appeared by Amy T. Kulb, Esq. Evidence was received and a transcript (pages 1-64) of this hearing was made. The record closed November 14, 2019, when the transcript was received.

After consideration of the entire record, the Committee issues this Determination and Order; all findings, conclusions, determinations and orders herein are unanimous.

STATEMENT OF CASE

This case was brought pursuant to PHL §230(10)(p) which provides for a hearing with circumscribed issues when a licensee is charged with misconduct based upon a criminal conviction under federal or state law and/or upon an administrative adjudication in another state regarding conduct that would amount to a crime and/or professional misconduct if committed in New York. N.Y. Education Law (“Educ. Law”) §6530(9). The scope of the hearing is limited to a determination of the penalty, if any, to be imposed upon the licensee. In the instant case, Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(d) for having had disciplinary action taken by another state.

FINDINGS OF FACT

Citations in parentheses, which refer to transcript page numbers (“T”) and exhibits (“Ex”) that were accepted into evidence, represent evidence found persuasive by the Committee in arriving at a particular finding.

1. Respondent, Kakarla Chalam, M.D., was authorized by the New York State Education Department to practice medicine in New York State on January 3, 1989, by the issuance of license number 176948. Respondent is a board-certified ophthalmologist and subspecialist in retina diseases and surgery. (Ex 4) (T 24-25)
2. On July 9, 2019, Respondent was served with a Notice of Referral Proceeding and Statement of Charges¹. (Ex 1)
3. In a February 21, 2018 Settlement Agreement between Respondent and the Florida Department of Health (“Settlement Agreement”), Respondent stipulated that he was

¹ The hearing was originally scheduled for August 13, 2019, in Menands, New York. Respondent, by his attorney, requested and was granted, with no objection by the Department, an adjournment of the Matter to October 23, 2019, in New York City.

charged in an Administrative Complaint brought by the State of Florida Board of Medicine (“Florida Board”) with failing to appropriately and adequately diagnose and maintain records for two patients. Respondent neither admitted nor denied the allegations which if proven would have warranted disciplinary action, and he agreed to a stipulated disposition. The Settlement Agreement included a letter of concern, a \$20,000 fine, a mandated records course and a continuing medical education (“CME”) course. On August 9, 2018, the Florida Board issued a final order approving and adopting the Settlement Agreement. (Ex 3) (T 11, 42, 43-45)

**CONCLUSIONS OF LAW
and
DETERMINATION AS TO PENALTY**

The Department charged Respondent with one Specification of professional misconduct pursuant to Educ. Law §6530(9)(d) for having disciplinary action taken by another state where the conduct, if committed in New York state, would have constituted professional misconduct under the laws of New York state, namely N.Y. Educ. Law §6530(3) (practicing with negligence on more than one occasion) and §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient) based on Florida’s complaints of medical malpractice and recordkeeping for two patients.

The Committee noted that the Florida Board’s action is the only blemish in Respondent’s 30+ years of practice. Respondent’s testimony and his 94-page Curriculum Vitae (Ex B) demonstrated to the Committee that the Respondent has had an outstanding career. Respondent was a department Chair for six years at the University of South Carolina School of Medicine, and from 2000 to 2017, Respondent was Chair of the Ophthalmology Department, University of Florida College of Medicine, Jacksonville campus, where he started “a technology fellowship

program, advanced the science, established a basic science lab that designed instruments ... and established the department of faculty residency program.” (T 27-28). Currently, Respondent is Vice Chair of the Loma Linda University Department of Ophthalmology, Chair of the Retina Division, and Program Director/Administrator of the Fellowship Program “which is nationally acclaimed.” Respondent testified that he “expanded [both] the surgeries (from 800 to 3,000) and the scope of the surgeries, and introduced the gene therapy treatment at Loma Linda Medical School for which I was specifically recruited.” (T 34-35).

Respondent has “191 Peer Review publications.” Respondent has performed “37,000 retina surgeries” and he has “mentored surgeries with lenses, that are actually called by name, Chalam surgery lenses, that are used throughout the world to advance and speed up the surgery [which] used to take three hours ... and now takes about 40 minutes ... and I am proud to say that I contributed to this.” (T 36-37). Respondent has trained and supervised scores of residents and fellows, and he continues to research, perform, train and supervise specialized ophthalmologic care and treatment.

The Committee finds that the Florida Board’s action which was an Order resulting from Respondent’s Settlement Agreement with that Board, does not warrant disciplinary action against Respondent in this state. The Committee further finds that there was no evidence presented to establish that the public would be harmed or is at risk if disciplinary action is not taken against Respondent. The Committee believes the action and conditions of the Florida Board’s Order provide ample protection of the public, and that further disciplining Respondent would not serve to enhance the public’s protection. In fact the Committee believes that an action against Respondent’s New York license could potentially have the effect of depriving patients of access to Respondent’s evaluation, care and treatment.

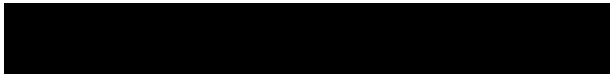
Pursuant to Educ. Law §6530, "any licensee found guilty of such misconduct under the procedures prescribed in section two hundred thirty of the public health law shall be subject to penalties as prescribed in section two hundred thirty-a of the public health law except that the charges may be dismissed in the interest of justice" (emphasis added). The Committee concludes that the charges against Respondent should be dismissed in the interest of justice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The charge of misconduct under Educ. Law §6530(9)(d) is dismissed in the interest of justice.
2. There shall be no disciplinary action taken against Respondent's license and no penalty shall be imposed.
3. This order shall be effective upon service on the Respondent as required under PHL §230(10)(h).

DATED: _____, New York
December 16, 2019


C. DEBORAH CROSS, M.D., Chair
DAVID M. KIRSHY, M.D.
MICHAEL COLON, ESQ.

APPENDIX 1

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

IN THE MATTER
OF
KAKARLA CHALAM, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Kakarla Chalam, M.D.
Loma Linda University College of Medicine
Department of Ophthalmology
11370 Anderson Street, Suite 2025
Loma Linda, CA 92354

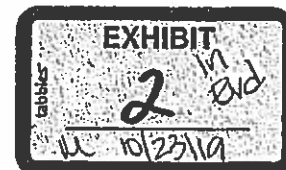
PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on August 13, 2019, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719,¹ and at such other adjourned dates, times and places as the committee may direct.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a

¹ For GPS purposes, enter "Menands", not "Albany".



crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. You may also file a written brief and affidavits with the Committee. All such documents shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of

witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here 

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. 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 OUT 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
July 2, 2019


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Hannah E.C. Moore
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER

OF

KAKARLA CHALAM, M.D.

STATEMENT
OF
CHARGES

KAKARLA CHALAM, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 3, 1989, by the issuance of license number 176948 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 9, 2018, the Florida Medical Board (hereinafter "Florida Board") issued a Final Order adopting the Settlement Agreement, approved February 21, 2018, that was signed by Respondent and the Florida Department of Health. The Final Order imposed disciplinary action against Respondent, an ophthalmologist, based on complaints that Respondent did not appropriately and adequately diagnose the conditions of two patients, and that he failed to maintain and keep sufficient medical records for those patients. The Final Order imposed the stipulated disposition, consisting, in part, of: a letter of concern, a \$20,000 fine, and a mandated records course and continuing medical education course.

B. The conduct resulting in the Florida disciplinary action against Respondent constitutes misconduct under the laws of New York State pursuant to the following sections of New York State Law:

1. New York Education Law § 6530(3) (practicing the profession with negligence on more than one occasion); and/or
2. New York Education Law § 6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient)

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§ 6530[3], [32]) as alleged in the facts of the following:

1. Paragraphs A and B.

DATE: July 2, 2019
Albany, New York


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

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

IN THE MATTER

OF

ANSWER

KAKARLA CHALAM, M.D.
-----X

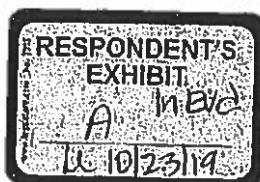
Respondent, KAKARLA CHALAM, M.D., by his attorneys, Jacobson Goldberg & Kulb, LLP, answers the Statement of Charges dated July 2, 2019 upon information and belief, as follows:

FACTUAL ALLEGATIONS

1. Respondent refers the Court to the August 9, 2018 Final Order issued by the Florida State Board of Medicine for its terms and conditions and denies any allegations not contained in the Florida Final Order.
2. Respondent denies the allegations set forth in the Factual Allegations B.1. and B.2. of the Statement of Charges.

SPECIFICATION OF CHARGE

3. Denies each and every allegation set forth in the Specification of Charges.



WHEREFORE, the Respondent demands judgment dismissing Petitioner's Statement of Charges.

Dated: Garden City, New York
October 17, 2019

Yours, etc.

[REDACTED]
AMY T. KULB, ESQ.
JACOBSON GOLDBERG & KULB, LLP
Attorneys for Respondent
585 Stewart Avenue - Suite 500
Garden City, New York 11530
(516) 222-2330

To: [REDACTED]
Ann H. Gayle
Administrative Law Judge
NYS Department of Health

[REDACTED]
Hannah Moore
Senior Attorney
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street - 4th Floor
New York, New York 10007

To: Hannah E.C. Moore, Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237-0032

Amy T. Kulb, Esq.
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Garden City, New York 11530

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Department of Ophthalmology
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