



# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Acting Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

December 15, 2021

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David A. Bloom, M.D.  


Noemi Baez, Esq.  
Salomon & Baez Law, P.C.  
1180 Avenue of the Americas, 8<sup>th</sup> Floor  
New York, New York 10036

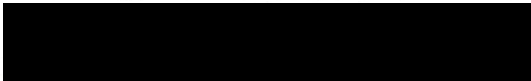
Paul Tsui, Esq.  
New York State Department of Health  
Bureau of Professional Medical Conduct Corning  
Tower Building, 25<sup>th</sup> Floor  
Empire State Plaza  
Albany, New York 12237

**RE: In the Matter of David A. Bloom, M.D.**

Dear Parties:

Enclosed please find a Corrected copy of the Terms of Probation for Determination and Order (No. 21-253) of the Hearing Committee in the above referenced matter. Please replace the Terms of Probation sent under cover letter dated December 8, 2021 with the enclosed Terms of Probation.

Sincerely,

  
Dawn MacKillop-Soller  
Acting Chief Administrative Law Judge  
Bureau of Adjudication

DXM: nm  
Enclosure



# Department of Health

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Albany, New York 12237

**RE: In the Matter of David A. Bloom, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 21-253) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Office of Professional Medical Conduct  
Riverview Center  
150 Broadway - Suite 355  
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

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 licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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:

Jean T. Carney, 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 Ms. Carney 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,



Dawn MacKillop-Soller  
Acting Chief Administrative Law Judge  
Bureau of Adjudication

DXM: cmg  
Enclosure

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

**COPY**

-----x  
: **IN THE MATTER** :

**DETERMINATION**

: **OF** :

**AND**

: **DAVID A. BLOOM, M.D.** :

**ORDER**

-----x  
**BPMC-21-253**

A Notice of Referral Proceeding and Statement of Charges dated July 8, 2021, were served upon David A. Bloom, M.D. (Respondent) pursuant to PHL § 230(10)(d)(i). (Exhibit 1.) This case involves charges brought against the Respondent under PHL § 230(10)(p), having committed misconduct as defined in Educ. Law § 6530(9)(b) and § 6530(9)(d). (Exhibit 1 and Appendix I.)

A hearing was held on November 18, 2021, via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **MOHAMMAD-REZA GHAZI-MOGHADAM, M.D.**, Chairperson, **REID T. MULLER, M.D.** and **JEFFREY FUDIN, Pharm. D.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee in this matter. **NATALIE BORDEAUX, ADMINISTRATIVE LAW JUDGE**, served as the administrative officer. The Department appeared by Paul Tsui, Associate Counsel. The Respondent was represented by Andrew Salomon, Esq., and testified on his own behalf. The Hearing Committee received and examined documents from the Department (Exhibits 1-8) and the Respondent (Exhibits A and D). A transcript of the proceeding was made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order. All findings, conclusions, determinations, and orders herein are unanimous unless otherwise noted.

The Hearing Committee sustained the charges that the Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(b) and § 6530(9)(d) and determined to partially suspend the Respondent's medical license until he completes a surgical re-entry program, followed by a five-year period of probation with conditions upon his ability to practice medicine in the state of New York.

### **FINDINGS OF FACT**

1. The Respondent was authorized to practice medicine in the State of New York on July 21, 2010, by the issuance of license number 258003. (Exhibit 6.)
2. On March 1, 2021, the Medical Board of California (California Board) determined to revoke the Respondent's California medical license, then stayed the revocation, and placed the Respondent on probation for a period of five years, with conditions including successful completion of a clinical competence assessment program, completion of a medical recordkeeping course, practice under the supervision of a practice monitor, and a prohibition from engaging in the solo practice of medicine. This determination was based upon the Respondent's treatment of Patient A, for whom the Respondent performed a laparoscopic cholecystectomy (removal of the gallbladder) on October 23, 2016 without a Critical View of Safety (CVS) to see the patient's anatomy. The patient sustained a bile duct injury that necessitated additional surgery. During an investigation, the California Board reviewed the Respondent's documentation of the surgery and found that the Respondent had failed to document the specific steps he had taken before and during the surgery. The California Board determined that the Respondent's actions constituted gross negligence, repeated negligence, and failure to maintain adequate and accurate records relating to the provision of services to Patient A. (Exhibit 8.)

### CONCLUSIONS OF LAW

The Department charged the Respondent with two Specifications of Charges of professional misconduct under Educ. Law § 6530. The Hearing Committee sustained both specifications.

First Specification: Educ. Law § 6530(9)(b) - having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York state.

By disciplinary order dated March 1, 2020, the California Board revoked the Respondent's California medical license, then stayed the revocation, and placed the Respondent on probation for a period of five years, with conditions including successful completion of a clinical competence assessment program, completion of a medical recordkeeping course, practice under the supervision of a practice monitor, and a prohibition from engaging in the solo practice of medicine. This determination was based upon findings that the Respondent deviated substantially from the standard of care when he removed a patient's gallbladder without obtaining a proper view of the patient's anatomy and transected a common hepatic duct as part of one large incision into the patient, resulting in a bile duct injury that necessitated further surgery. The California Board also determined that the Respondent's operative note failed to explain all steps that he had taken while performing the surgery. (Exhibit 8.)

The Department's July 8, 2021 Statement of Charges alleges that the Respondent's misconduct in California described in the March 1, 2020 order would, if committed in New York, constitute professional misconduct as defined in: (1) Educ. Law § 6530(3), practicing the

profession with negligence on more than one occasion (factual allegation C.1); (2) Educ. Law § 6530(4), practicing the profession with gross negligence on a particular occasion (factual allegation C.2); and (3) Educ. Law § 6530(32), failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient (factual allegation C.3). (Exhibit 1.)

The Hearing Committee did not agree that the Respondent's conduct would, if committed in New York, constitute professional misconduct under Educ. Law § 6530(3). While they agreed that the Respondent acted negligently, as he failed to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, they were not persuaded that the Respondent's actions with respect to only Patient A during one encounter constituted negligence on more than one occasion, as the Respondent's conduct deviated from the standard of care in several ways during one procedure, rather than during several encounters. Rho v. Ambach, 74 N.Y.2d 318 (1989.)

However, the Hearing Committee concurred that the Respondent's actions in removing Patient A's gallbladder would constitute gross negligence if committed in New York (Educ. Law § 6530(4)), as his failure to obtain a clear view of the patient's anatomy before performing the surgery showed negligence of egregious proportions. The Hearing Committee also agreed that the Respondent's failure to accurately document his treatment of Patient A would, if committed in New York, constitute professional misconduct under Educ. Law § 6530(32). The Hearing Committee thus determined to sustain this charge.

Second Specification: Educ. Law § 6530(9)(d) - having his license to practice medicine revoked, suspended or having other disciplinary action taken 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 would, if committed in New York state, constitute professional misconduct under the laws of New York state.

For this specification, the Department again charges that the Respondent's actions would constitute professional misconduct under Educ. Law §§ 6530(3), (4), and (32) if committed in New York. For the reasons previously set forth with respect to the first specification, the Hearing Committee did not agree that the Respondent's actions would, if committed in New York, constitute negligence on more than one occasion pursuant to Educ. Law § 6530(3). However, the Hearing Committee agreed that the Respondent's actions would, if committed in New York, constitute gross negligence (Educ. Law § 6530(4)) and failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient under Educ. Law § 6530(32). The Hearing Committee thus determined that the Respondent violated Educ. Law § 6530(9)(d) and sustained this charge.

#### **DETERMINATION AS TO PENALTY**

The Department requested revocation of the Respondent's license, or, alternatively, a minimum three-year stayed suspension, followed by a five-year probation period with a practice monitor, proof of completion of California Board requirements, a restriction from engaging in solo practice of medicine, and a \$10,000 fine. The Respondent asked the Hearing Committee to consider imposing retraining requirements, contending that additional penalties would not serve the public.

The Hearing Committee carefully considered the California Board findings and determinations. The Hearing Committee saw no benefit in revoking the Respondent's medical license, as the California Board order acknowledged that, despite the departure from acceptable standards in the Respondent's treatment of Patient A during a routine procedure, a small number



of patients experience complications from gallbladder removal. Furthermore, the Hearing Committee saw no purpose in imposing a fine upon the Respondent, since the professional misconduct did not occur in the state of New York and would not address the real concerns highlighted by the California Board order.

The Hearing Committee found that the Respondent requires retraining in surgery, as his errors with respect to Patient A largely reflected a lack of education regarding standard practices. Such retraining must be a prerequisite to his ability to engage in the practice of medicine within the state of New York, as it is the most effective way to protect the public from further deviations from standards of medical care. In addition, the Hearing Committee agreed with the California Board's determination to impose a lengthy period of probation of five years because the Respondent has only rarely and inconsistently practiced medicine since the incident involving Patient A approximately five years ago. During the probationary period, the Respondent may only practice under the supervision of a practice monitor and is prohibited from engaging in solo practice.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The first and second specifications of professional misconduct set forth in the Statement of Charges are **SUSTAINED**.
2. The Respondent's license to practice medicine in the state of New York is **SUSPENDED PARTIALLY**, pursuant to PHL § 230-a(2)(f), until the Respondent successfully completes a surgical re-entry program.
3. Upon the Respondent's demonstration to the Director of the Office of Professional Medical Conduct of his successful completion of a surgical re-entry program,

David A. Bloom, M.D. – Direct Referral

pursuant to PHL § 230-a(9), the Respondent is then placed on probation for five years, subject to the conditions provided in the Terms of Probation (Appendix II) and tolled when the Respondent is not engaged in the practice of medicine in the state of New York.

4. The Respondent must comply with the terms of this Determination and Order and all the attached Terms of Probation.

5. This Order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

DATED: 12/7, New York, *Amsterdam*, 2021

[Redacted signature]

Mohammad-Reza Ghazi-Moghadam, M.D.,  
Chairperson  
Reid T. Muller, M.D.  
Jeffrey Fudin, Pharm. D.

To: David A. Bloom, M.D.

[Redacted recipient address]

Noemi Baez, Esq.  
Salomon & Baez Law, P.C.  
1180 Avenue of the Americas, 8<sup>th</sup> Floor  
New York, NY 10036

Paul Tsui, Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower Building – 25<sup>th</sup> Floor  
Empire State Plaza  
Albany, NY 12237

# APPENDIX I

IN THE MATTER

OF

DAVID A. BLOOM, M.D.

STATEMENT  
OF  
CHARGES

David Bloom, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 21, 2010, by the issuance of license number 258003 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about March 1, 2021, the California Medical Board (hereinafter, "California Board") by a Decision After Non-Adoption (hereinafter, "California Decision"), revoked the Respondent's Physician and Surgeon's Certificate and stayed the revocation with five years' probation subject to certain terms and conditions including, but not limited to, a clinical competence assessment program, continuing medical education in ethics and record keeping, a practice monitor, a prohibition on supervising physician assistants, and a prohibition from the solo practice of medicine. The California Board charged the Respondent with failure to obtain a Critical View of Safety (CVS) before removing the patient's gallbladder while performing a laparoscopic cholecystectomy which resulted in a common bile duct injury requiring further surgery to repair and failure to adequately document the surgery in the operative report.

B. The California Board charged the Respondent with violations constituting gross negligence, repeated acts of negligence, and failure to maintain complete and accurate records.

C. The conduct resulting in the California Board's disciplinary action against the Respondent would constitute 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);
2. New York Education Law §6530(4) (Practicing the profession with gross negligence on a particular occasion); and/or
3. 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**

#### **FIRST SPECIFICATION**

#### **HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state as alleged in the facts of the following:

1. The facts of Paragraphs A, B and C and C1, C and C2, and/or C and C3.


**SECOND SPECIFICATION**

**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having the Respondent's license to practice medicine revoked, suspended or having other disciplinary action taken, or having the Respondent's application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered the Respondent's 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 as alleged in the facts of the following:

2. The facts of Paragraphs A, B and C and C1, C and C2, and/or C and C3.

DATE: July 8, 2021  
Albany, New York

  
JEFFREY J. CONKLIN  
Acting Deputy Counsel  
Bureau of Professional Medical Conduct

# APPENDIX II

### **Terms of Probation**

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by Educ. Law § 6530 or § 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
7. The Respondent is prohibited from engaging in the solo practice of medicine during the term of his probation.
8. The Respondent shall practice medicine only when his practice is monitored by a physician specializing in surgery, proposed by the Respondent and subject to the written approval of the Director of the OPMC. The practice monitor shall visit the Respondent at each and every location in which he practices, on a random unannounced basis at least



monthly, and shall examine the records maintained by the Respondent. The review will determine whether the Respondent's medical practices are conducted in accordance with generally accepted standards of practice. Any perceived deviation of accepted standards of medical practices or refusal to cooperate with the practice monitor shall be reported within 24 hours to the OPMC. The Respondent shall remain solely responsible for all expenses associated with monitoring, including fees, if any, to the practice monitor. The Respondent shall cause the monitor to report quarterly, in writing, to the Director of the OPMC.

9. The Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with PHL § 230(18)(b). Proof of coverage shall be submitted to the Director of OPMC prior to the Respondent's practice after the effective date of this Order.
10. The Respondent shall comply with all terms, conditions, restrictions, requirements, and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of non-compliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding against the Respondent as may be authorized by law.