



Department of Health

ANDREW M. CUOMO
Governor

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

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

February 5, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Steven Gelbard, M.D.
[REDACTED]

Ian Silverman, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Steven Gelbard, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.18-027) 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 Mr. 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,

A large black rectangular redaction box covering the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm

Enclosure

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

-----X
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IN THE MATTER :
:
OF :
:
STEVEN GELBARD, M.D. :
:
-----X

DETERMINATION

AND

ORDER

BPMC-18-027

A hearing was held on January 18, 2018, at the offices of the New York State Department of Health (Department) at 150 Broadway, Menands, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **LYON M. GREENBERG, M.D.**, Chairperson, **MOHAMMAD-REZA GHIAZI-MOGHADAM, M.D.** and **DAVID IRVINE, DIISc, P.A.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by Ian Silverman, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges dated February 6, 2017, were served upon Steven Gelbard, M.D. (Respondent), who appeared at the hearing and represented himself.¹ The Respondent testified on his own behalf at the hearing. The Hearing Committee received and examined documents from the Department (Exhibits 1-5) and the Respondent (Exhibit A) and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charge that the Respondent committed professional misconduct, in violation of Education Law (Educ. Law) § 6530(9)(d), and unanimously agrees that the penalty of censure and reprimand with probation and conditions, is appropriate.

¹ Copies of the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix I.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(d), “having (his) license to practice medicine revoked, suspended or having other disciplinary action taken...” where the conduct resulting in such disciplinary action taken against his license to practice medicine would, if committed in the state of New York, constitute professional misconduct under the laws of the state of New York. This case is based on a Settlement Agreement by the State of Florida Department of Health (Florida Board) dated December 3, 2013, finding the Respondent guilty of professional misconduct based on his improper management of two patients following surgical procedures.

FINDINGS OF FACT

The Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits [Ex.]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Steven Gelbard, M.D., the Respondent, was licensed to practice medicine in New York on August 7, 1987, by the issuance of license number 171648 by the Education Department. [Ex. 3].
2. In a Settlement Agreement dated December 3, 2013, the Florida Board reprimanded the Respondent and directed him to pay a fine in the amount of \$20,000 and costs totaling \$21,000 and to complete Continuing Medical Education in general wound care. The Respondent was also ordered to complete a physician assessment by Florida Cares and until such time and pending board approval, he was prohibited from performing surgeries and procedures and using “off-label” products. [Ex. 4].

3. The Florida Board based its determination on the Respondent's failure to properly follow up with a patient following a lumbar laminectomy, foraminotomy and discectomy with fusion procedure and his use of "Sani-cloth Plus" wipes as a packing material to treat a posterior cervical wound in a different patient after spinal surgery. [Ex. 4].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

The Florida Board found the Respondent breached the standard of care in his post-surgical treatment of two patients by surgically closing one patient's cervical wound after packing it with Sani-cloth Plus wipes, a foreign material to the human body, and in his abrupt departure from a surgery center following extensive back surgery on a different patient. Like Florida, physicians in New York are required to meet acceptable standards of care in the treatment of patients post-operatively by establishing adequate treatment plans, rendering proper diagnoses and performing proper monitoring and assessments. The Hearing Committee considered the Respondent's failure to adhere to these requirements, which resulted in adverse outcomes for both patients, including infections, additional invasive surgeries and increased pain. The Respondent's failures, had they occurred in New York, would have constituted practicing the profession with negligence on more than one occasion, gross negligence, incompetence on more than one occasion, and gross incompetence, as defined in Educ. Law §§ 6530(3), 6530(4), 6530(5) and 6530(6), respectively.

In considering the appropriate penalty to assess, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, the Hearing Committee found that the sustained specification indicates the Respondent's unsound medical decisions that exposed his patients to harm in the aftermath of surgery. As such, the Hearing Committee determined that the appropriate penalty is censure and reprimand and probation for a period of three years, with a practice monitor. The Hearing Committee found a practice monitor appropriate to oversee the Respondent's judgment in the handling of his surgical patients, especially considering his failure to acknowledge his wrongdoing other than the use of Sani-cloth Plus wipes, which he attempted to rationalize in his description of them as "non-toxic" and acceptable for use as part of his medical "training program." [Ex. A].

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is subject to a censure and reprimand, and the Respondent is placed probation for a period of three years, subject to the conditions provided in the Terms of Probation (Appendix II);
2. The Respondent must comply with the terms of this Determination and Order and all the attached Terms of Probation; and
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h).

DATED: Albany, New York
January 26, 2018


Lyon M. Greenberg, M.D. /
Chairperson

Mohammad-Reza Ghazi-Moghadam, M.D.
David Irvine, DHSc, P.A.

TO: Steven Gelbard, M.D.



Ian Silverman, Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

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. Respondent shall practice medicine in New York State only when monitored by a licensed physician, board certified in an appropriate specialty (practice monitor), who is proposed by Respondent and subject to the written approval of the Director of the OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit the Respondent's medical practice at each and every location, on a random, unannounced basis at least monthly and shall examine a selection (no fewer than 20)

of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to the OPMC.

- b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of the OPMC.
 - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - d. 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 § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.
8. The terms set forth in the paragraphs above are the minimum probation terms to be imposed on the Respondent, and other terms may be added by the Director of the OPMC. All compliance costs, including expenses and fees associated with the practice monitor, shall be the Respondent's responsibility.
9. Respondent shall comply with these probationary terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a 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 authorized by law, against Respondent.

APPENDIX II

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

IN THE MATTER
OF
STEVEN GELBARD, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: STEVEN GELBARD, M.D.

2706 West Atlantic Boulevard
Pompano Beach, FL 33069

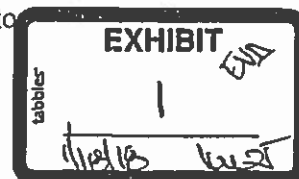
PLEASE TAKE NOTICE THAT:

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 April 19, 2017, at 10:30 a.m., at the offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 10007.

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 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



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. A summary of the Department of Health Hearing Rules is enclosed.

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

7
[REDACTED]
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: New York, New York
February 6, 2017

[REDACTED]
Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

John Thomas Viti
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007
(212) 417-4450

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

IN THE MATTER

OF

STEVEN GELBARD, M.D.

STATEMENT

OF

CHARGES

STEVEN GELBARD, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 7, 1987, by the issuance of license number 171648 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 30, 2013, The State of Florida, Board of Medicine ("Florida Board") issued a Final Order after having opened an investigation into the conduct and medical practice of Respondent. The Final Order imposed a Reprimand, required the Respondent to pay a \$20,000.00 fine and \$26,229.21 in cost, and required the Respondent to complete Continuing Medical Education and to undergo an evaluation by Florida CARES. The Order also prohibited Respondent's use of "off-label" products and prohibited him from performing surgery or procedures unless or until Respondent completed Florida CARES and receives approval from the Florida Board. The Final Order approved a Florida Board Counter Settlement Agreement that revised and incorporated a State of Florida Department of Health Settlement Agreement ("Settlement Agreement") dated on or about December 2, 2013. The Settlement Agreement, in which the Respondent neither admitted nor denied the allegations of facts, was based on two (2) separate, State of Florida Department of Health Administrative Complaints (the "Complaints"). The First Complaint alleged that the Respondent, with respect to patient N.R. failed to provide proper post-operative

treatment and care; knowingly and intentionally repeatedly using an unauthorized packing material, Sani-cloth wipes, for packing Patient's N.R. wounds; knowingly and intentionally leaving a foreign body (Sani-cloths wipes) in Patient N.R.; performing the procedure of packing Patient's N.R. wound with a material not intended to be used on or within the human body, without obtaining full informed, written consent from Patient N.R., thereby violating Florida Statute Chapters, 458.331(1)(t), 458.331(1)(u), and 456.072(1)(cc). In addition, the First Complaint alleged that Respondent violated 456.072(1)(w) by failing to timely update profiling and credential requirements with respect to Respondent's precautionary suspension from the facility at which Respondent had privileges. The Second Complaint alleged that Respondent failed to properly obtain fully informed consent prior to performing a procedure on Patient D.L.; failed to provide proper post-operative treatment; failed to adequately diagnose postoperative complaints, and failed to personally examine Patient D.L. prior to discharge, thereby violating Florida Statute Chapters, 458.331(1)(t).

1. The conduct resulting in the Order would, collectively, constitute misconduct under the laws of New York State, pursuant to New York Education Law Section 6530(3) (Practicing the profession with negligence on more than one occasion), §6530(4) (Practicing the profession with gross negligence on a particular occasion), §6530(5) (Practicing the profession with incompetence on more than one occasion), §6530(6) (Practicing the profession with gross incompetence), §6530(16) (A willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations governing the practice of medicine), §6530(26) (Performing professional services which have not been duly authorized by the patient), and §6530(30) (Abandoning or neglecting a patient under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care),

SPECIFICATION OF CHARGES

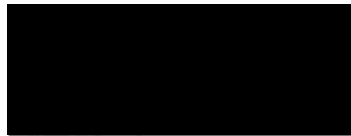
FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having 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), (4), (5), (6), (16), (26) and (30), as alleged in the facts of the following:

1. The facts in Paragraph A and its subparagraph.

DATE: February 6, 2017
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct