



Department of Health

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

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

April 4, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Besosie Ganai, M.D.



Mark S. Nash, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

RE: In the Matter of Besosie Ganai, M.D.

Dear Parties:

Enclosed please find the Determination and Order (18-080) 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:

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,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
Enclosure

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

In the matter of

Besosie Ganai, M.D.
NYS license # 122284

**Determination
and Order**

181080

A notice of referral proceeding and statement of charges, both dated December 6, 2017, were served on Respondent **Besosie Ganai, M.D.** The statement of charges alleged professional misconduct in violation of New York State Education Law 6530. A hearing was held at offices of the New York State Department of Health, 259 Monroe Avenue, Rochester, New York, on March 15, 2018.

Pursuant to Public Health Law 230(10)(e), **Heidi B. Miller, P.A.-C., M.P.H.**, Chair, **Sanford H. Levy, M.D.**, and **Lyon M. Greenberg, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. **John Harris Terepka**, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by **Mark S. Nash, Esq.** **Besosie Ganai, M.D.** (the Respondent) did not appear, although duly served with notice of the hearing in conformity with the requirements of PHL 230(10)(d). (Exhibits 2, 3.) Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the hearing committee issues this determination and order sustaining the charges and revoking the Respondent's license to practice medicine.

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health and authorized it to conduct disciplinary proceedings in matters of professional medical conduct. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(b)&(d).

Pursuant to PHL 230(10)(p), a hearing on circumscribed issues, or "direct referral proceeding," is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner:	None
Petitioner exhibits:	1-7

Witnesses for the Respondent:	None
Respondent exhibits:	None

A transcript of the hearing was made.

FINDINGS OF FACT

1. Respondent Besosie Ganai, M.D. was authorized to practice medicine in New York State on October 25, 1974 under license number 122284. (Exhibit 5.)

2. On October 21, 2016 the Medical Board of California issued a proposed decision, which was adopted as a decision and order of the California Board on February 2, 2017. (Exhibits 6, 7.) The findings made by the California Board included that the Respondent engaged in unprofessional conduct in violation of California law, specifically 1) gross negligence; 2) repeated negligent acts; and 3) failure to maintain adequate and accurate records. (Exhibit 7, pages 8-9.) The allegations involved his care and treatment of one patient.

3. The California Board revoked the Respondent's medical license, but stayed the revocation and placed the Respondent on probation for five years. Conditions of probation included completion of a professionalism program, a clinical training program, and a professional medical record keeping course. The Respondent was prohibited from supervising physician assistants during the probation period. (Exhibit 7, pages 10-12.)

HEARING COMMITTEE DETERMINATION

The Petitioner charged that the California Board's findings would establish misconduct in New York pursuant to Ed.L 6530(3) (practicing with negligence on more than one occasion); 6530(4) (practicing with gross negligence on a particular occasion); and 6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.) The hearing committee unanimously agreed (3-0) that the misconduct found by the California Board would, if committed in New York, constitute misconduct pursuant to Ed.L 6530(3), (4), and (32).

The hearing committee unanimously determined (3-0) that, as alleged in the statement of charges, the Respondent violated Ed.L 6530(9)(b), which defines professional misconduct, in pertinent part, as:

9. (b) Having been found guilty of improper 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.

The hearing committee also unanimously determined (3-0) that the California Board's decision and order established that the Respondent violated Ed.L 6530(9)(d) which defines professional misconduct, in pertinent part, as:

9. (d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken... where the conduct resulting in the revocation, suspension or other disciplinary action... would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The Petitioner recommended revocation of the Respondent's license. Although duly served with notice of the hearing in conformity with PHL 230(10)(d), the Respondent failed to appear and failed to offer any evidence or argument to persuade the committee to a different conclusion. The hearing committee unanimously (3-0) determined that revocation of the Respondent's license pursuant to PHL 230-a(4) is an appropriate penalty.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is **REVOKED**.

This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

4-3-18

By:


Heidi B. Miller, P.A.-C., M.P.H., Chair

Sanford H. Levy, M.D.
Lyon M. Greenberg, M.D.

To: Mark S. Nash, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Besosie Ganai, M.D.



APPENDIX I

IN THE MATTER
OF
BESOSIE GANAL, M.D.

STATEMENT
OF
CHARGES

BESOSIE GANAL, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 25, 1974 by the issuance of license number 122284 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 2, 2017, the Medical Board of California ("CMB") issued an Order against the Respondent. The CMB found the Respondent acted with gross negligence, committed repeated negligent acts, and failed to maintain adequate and accurate records. The CMB revoked the Respondent's license, but immediately stayed the revocation and placed the Respondent on probation for 5 years. The Respondent was ordered to complete a professional program (ethics), clinical training program, medical record keeping course, and during his probation is prohibited from supervising physician assistants. The Order was based on the care and treatment of one patient and the Respondent's failure to provide a covering physician while on vacation.

B. The conduct resulting in the CMB's disciplinary action against the Respondent would constitute misconduct under the laws of New York State pursuant to the following section of New York State Law:

1. New York Education Law § 6530(3) (Practicing the profession of medicine with negligence on more than one occasion); and/or
2. New York Education Law § 6530(4) (Practicing the profession of medicine 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 in Paragraphs A, B, and B1, B2, and/or B3.

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 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 as alleged in the facts of the following:

1. The facts in Paragraphs A, B, and B1, B2, and/or B3.

DATE: December 6, 2017
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct