



Department of Health

ANDREW M. CUOMO
Governor

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

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

March 29, 2018

CORRECTED LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Keating, Esq.
Dughi, Hewit & Domalewski, P.C.
340 North Avenue E
Cranford, New Jersey 07016

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

Malini B. Rao, M.D.


RE: In the Matter of Malini B. Rao, M.D.

Dear Parties:

Enclosed please find a CORRECTED page 5 of the Determination and Order (No. 18-067) of the Hearing Committee in the above referenced matter. Please replace page 5 received under cover letter dated March 26, 2018 with the enclosed one.

Enclosed please find the Determination and Order (No. 18-067) 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.

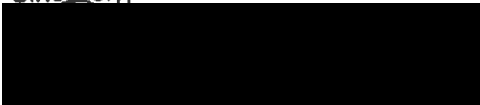
The notice of review served on the Administrative Review Board should be forwarded to:

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: nm
Enclosure

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

-----X
: :
IN THE MATTER : :
: :
: :

DETERMINATION

OF : :
: :

AND

MALINI B. RAO, M.D. : :
: :
-----X

ORDER

BPMC-18-067

A hearing was held on February 15, 2018, at the offices of the New York State Department of Health (Department).¹ Pursuant to § 230(10)(e) of the Public Health Law (PHL), **WILLIAM A. TEDESCO, M.D.**, Chairperson, **GEORGIA K. MILLOR, Ph.D., R.N.** and **BRUCE D. WHITE, D.O., J.D.**, 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 Marc Nash, Senior Attorney. A Notice of Referral Proceeding and Statement of Charges dated September 8, 2017, were served upon Malini B. Rao, M.D. (Respondent), who appeared at the hearing and was represented by Michael Keating, Esq.² The Respondent testified on her own behalf. There were no other witnesses. The Hearing Committee received and examined documents from the Respondent and the Department, and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that the Respondent committed professional misconduct, in violation of Education Law (Educ. Law) §§ 6530(9)(b) and 6530(9)(d), such that the penalty of suspension and

¹ The location of the hearing was 150 Broadway, Suite 510, Menands, New York.

² On September 28, 2017, Michael Keating, Esq. was served with the Notice of Referral Proceeding and Statement of Charges at 340 North Avenue E., Cranford, New Jersey, establishing service pursuant to PHL § 230(10)(d)(i). As such, jurisdiction was established. [Exhibit 2].

a period of probation, with conditions, is appropriate.

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)(b), "having been found guilty of 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," and § 6530(d), "having his or her license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct resulting in the disciplinary action taken against his or her 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 an order of the State of New Jersey Department of Law & Public Safety Division of Consumer Affairs, State Board of Medical Examiners (New Jersey Board), finding the Respondent guilty of professional misconduct resulting from her failure to document complications resulting from the unsuccessful placement of epidural catheters in the patient's back.

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.] or transcript page numbers [T.]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Malini B. Rao, M.D., the Respondent, was licensed to practice medicine in New York on October 5, 2009, by the issuance of license number 255096. [Ex. 3].

2. In an order dated June 17, 2016, the New Jersey Board found the Respondent guilty of professional misconduct based on her failure to record two failed efforts to place an epidural anesthetic in the lower lumbar spinal region of a labor and delivery patient. The catheter sheared in the epidural space both times, leaving fragments inside the patient's back, resulting in complications for the patient, including back pain, an emergency laminectomy procedure to evacuate and debride an abscess and treatment of a methicillin-resistant staphylococcus aureus infection (MRSA). The New Jersey Board also found the Respondent failed to truthfully record the immediate outcome following the incident in a medical note she authored in the patient's chart weeks later. [Ex. 4].

3. The New Jersey Board subjected the Respondent to a period of suspension for three years, two of which were ordered to be served actively, and the remaining year stayed and served as a period of probation, with a tolling provision based on the Respondent's practice of medicine outside the United States. The Respondent was also ordered to pay penalties and costs totaling \$50,000, complete courses in record keeping and medical ethics and demonstrate before the New Jersey Board that she is "fit and competent to resume the practice of medicine and 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)(b).

VOTE: Sustained (3-0)

SECOND 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 New Jersey Board found the Respondent's anesthesia care of a labor and delivery patient included two unsuccessful attempts at placement of an epidural catheter, causing the catheters to shear. Instead of taking the necessary steps to document the incident and remove the catheter fragments, inclusive of catheters with intact tips measuring 20 cm and 30 cm in length, the Respondent failed to take any action, leaving the catheter segments inside the patient's back. This resulted in back pain for the patient and her readmission to the hospital for an emergent exploratory laminectomy, at which time the catheter pieces were removed, an abscess was evacuated and debrided and cultures were taken, which revealed a MRSA infection.

While the Respondent took responsibility at the hearing for her documentation failures, the Hearing Committee noted her penchant for dishonesty in her attempt to justify her "false chart entry" made weeks after the incident mischaracterizing the aftermath, stating she "removed" the "Catheter and Tuohy needle," by testifying it was "not false" and merely "omitted" facts. [Ex. 4; T. 47]. Likewise, her deliberate refusal to take any steps to remedy the scenario by documenting and discussing it with the care team, referring the patient for an evaluation and imaging or following up with the patient afterwards, represented to the Hearing Committee her willingness to conceal wrongdoing at the expense of patient safety and health. In doing so, the Hearing Committee considered how in the case that is the subject of the New Jersey Board's order, the infected catheters invaded the patient's epidural space and compressed a nerve root, endangering the patient's health by exposing her to the risk of life-threatening infections, including meningitis.

Like New Jersey, New York requires physicians to report and document anesthesia procedures, including complications. The Hearing Committee noted the purposes in these requirements are to timely address adverse outcomes and place other providers on notice of care. Had the Respondent

disregarded these obligations in New York, her conduct would have constituted negligence on more than one occasion, as defined in Educ. Law § 6530(3), and a failure to maintain a record for a patient which accurately reflects the evaluation of the patient, as defined in Educ. Law § 6530(32).

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties and determined the sustained specifications indicate the Respondent's unsound judgment at the risk of patient harm. The Hearing Committee agreed with the Department's recommendation to impose a period of suspension, probation and monitoring, and determined the Respondent's medical license be subject to a period of actual suspension for fifteen months, followed by probation for one year, with a practice monitor. Although the Department requested a \$1,000.00 fine, the Hearing Committee determined that the fines ordered by the New Jersey Board constituted sufficient monetary penalties.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is **SUSPENDED** for one year and three months and the Respondent is placed on probation for one year, subject to the conditions provided in the Terms of Probation (Appendix II) and tolled while the Respondent is not engaged in practice in the state of New York;
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
_____, 2018

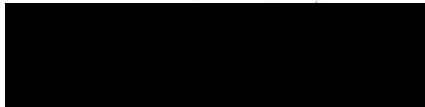


William A. Tedesco, M.D.
Chairperson

Georgia K. Millor, Ph.D., R.N.
Bruce D. White, D.O., J.D.

TO: Michael Keating, Esq.
Dughi, Hewit & Domalewski, P.C.
340 North Avenue E
Cranford, New Jersey 07016

Malini B. Rao, M.D.



Marc Nash
Senior Attorney
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 her 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 her 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 her 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 she 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
MALINI B. RAO, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: MALINI B. RAO, M.D.

In care of
Michael Keating, Esq.
Dughi, Hewit & Domalewski, P.C.
340 North Avenue E
Cranford, New Jersey 07016

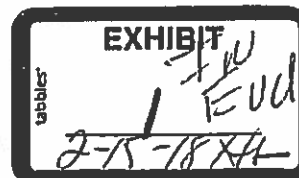
PLEASE TAKE NOTICE THAT:

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 November 16, 2017, 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

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.

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




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
September 8, 2017



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Marc S. Nash
Senior Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237


Marc.Nash@health.ny.gov

IN THE MATTER
OF
MALINI B. RAO, M.D.

STATEMENT
OF
CHARGES

MALINI B. RAO, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 5, 2009, by the issuance of license number 255096 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 17, 2016, the New Jersey Board of Medical Examiners (hereinafter, "New Jersey Board") filed an Order Granting Partial Summary Decision and Suspending Licensure which: suspended Respondent's license for three years, two years of actual suspension, assessed fines and costs totaling \$50,000, directed Respondent to take and complete continuing medical education in the area of ethics and record keeping, and prior to returning to practice medicine in New Jersey, Respondent must demonstrate a fitness to practice medicine and surgery. These disciplinary actions were based upon findings that Respondent failed to properly place an epidural catheter in one patient, failed to take out the catheter, and failed to properly record her treatment of this patient and then failed to advise anyone of the misplaced catheter for over one month.

B. The Conduct resulting in the New Jersey Board's disciplinary action against 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 with negligence on more than one occasion); and

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

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 (namely N.Y. Educ. Law § 6530(3) and (32)) as alleged in the facts of the following:

1. The facts in Paragraphs A, B and B.1; and/or Paragraphs A, B and B.2

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 (namely N.Y. Educ. Law § 6530(3) and (32)) as alleged in the facts of the following:

2. The facts in Paragraphs A and B and B.1; and/or Paragraphs A and B and B.2.

DATE: September 8, 2017
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct