



## 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 19, 2020

**BY EMAIL**

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

William J. Dailey, Jr., Esq.  
Sloane and Walsh, LLP  
One Center Plaza, 8<sup>th</sup> Floor  
Boston, Massachusetts 02108

**RE: In the Matter of Kevin Loughlin, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 20-072) 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,

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

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: nm  
Enclosure

-----X	:	
IN THE MATTER	:	DETERMINATION
	:	
OF	:	AND
	:	
KEVIN LOUGHLIN, M.D.	:	ORDER
-----X	:	BPMC-20-072

The Hearing Committee received and examined documents from the Department (Exhibits 1-4) and from the Respondent (Exhibits A-D).<sup>1</sup> The Hearing Committee heard testimony from the Respondent and from the Respondent's attorney.<sup>2</sup> A stenographic reporter prepared a transcript of the proceeding.

<sup>2</sup> The Respondent's attorney, who is not admitted to practice in New York State, offered sworn testimony on behalf the Respondent as his relationship with the Respondent extends beyond attorney-client to being a patient of the Respondent and utilizing the Respondent as an expert medical witness in the past. Mr. Dalley's testimony was limited to his personal experience with the Respondent and was not contested by the Department.

After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charges that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9)(d), and that the penalty of a censure and reprimand and a permanent limitation on his license to practice medicine is appropriate.

### **BACKGROUND**

The Department brought this 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) for "[h]aving 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." Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

### **FINDINGS OF FACT**

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Kevin Loughlin, M.D., the Respondent, was licensed to practice medicine in New York on December 3, 1976, by issuance of license number 129481 by the Education Department. (Dept. Ex. 3.)

2. The Respondent spent the majority of his career practicing medicine in the area of urology and retired from practice in 2015. He has no intention of returning to the practice of medicine. (Resp. Ex. D; Testimony [T.] Respondent.)

3. On December 20, 2018, the Commonwealth of Massachusetts, Board of Registration in Medicine (Massachusetts Board) issued a Consent Order whereby the Respondent was reprimanded and a permanent license restriction was imposed that prohibits the Respondent from the clinical practice of medicine in Massachusetts. (Dept. Ex. 4.)

4. The Massachusetts Board's action was based on a finding that the Respondent committed negligence on repeated occasions involving his care and treatment of two patients. (Dept. Ex. 4.)

#### **VOTE OF THE HEARING COMMITTEE**

The Hearing Committee decided, by a vote of 3-0, that the evidence supports sustaining the charge of the Respondent having committed professional misconduct as defined in Educ. Law § 6530(9)(d).

#### **HEARING COMMITTEE DETERMINATIONS**

The Department charged the Respondent with professional misconduct pursuant to Educ. Law § 6530(9)(d). The charge contains one specification pertaining to the Respondent's having had disciplinary action taken by a duly authorized professional disciplinary agency of another state. The Department alleges, and the Hearing Committee concludes, that the conduct resulting in the disciplinary action, if committed in New York State, would constitute professional misconduct under the laws of New York State as defined in Educ. Law § 6530(3) – practicing the profession with

negligence on more than one occasion.

The Hearing Committee is tasked with determining the appropriate penalty in this matter. In considering the full spectrum of penalties available under PHL § 230-a, the Hearing Committee found very informative and helpful the testimony provided by the Respondent at the hearing. The Respondent is unquestionably a seasoned medical professional who has received many awards and achieved well-deserved recognitions during his career. The action taken against the Respondent's license in Massachusetts stems from the Respondent failing to notify one patient of a positive prostate biopsy result (which positive result was consequently unknown by the patient for approximately ten months) and miscommunication or misinformation about a second patient's renal ultrasound (which lead to the patient not knowing he had renal stones for approximately five months). (Dept. Ex. 4; T. Respondent.) The Hearing Committee appreciated the Respondent readily acknowledging his mistake in failing to notify the first patient of his positive biopsy result. The Hearing Committee considered the testimony of the Respondent that he retired in 2015 and finds sincere his testimony that he has no desire to return to the practice of medicine, either in New York State or elsewhere. The Hearing committee also considered and credited the Respondent's testimony that he needs to maintain his medical license and board certification as a condition to keeping his current part-time job as a medical editor for a publishing company.


The Department has recommended that the Respondent's license to practice medicine in New York State be revoked. However, given the underlying facts of the action in Massachusetts and the totality of the testimony provided by the Respondent, the Hearing Committee finds appropriate that the Respondent be subject to a censure and reprimand and a permanent limitation on his medical license prohibiting him from the clinical practice of medicine.

**ORDER**

Now, after reviewing the evidence from the hearing, it is hereby ordered that:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained;
2. Pursuant to PHL § 230-a(1); the Respondent is subject to censure and reprimand;
3. Pursuant to PHL § 230-a(3), the Respondent's license to practice medicine shall be permanently limited such that he is prohibited from practicing clinical medicine; and
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: March 19, 2020  
Cooperstown, New York

  
James M. Leonardo, M.D., Ph.D., Chairperson  
Gregory Allen Threatte, M.D.  
David F. Irvine, DHSc, P.A.

Ian Silverman  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Room 2512, Corning Tower, ESP  
Albany, New York 12237

Kevin Loughlin, M.D.  
c/o William J. Dailey, Jr.  
Sloane and Walsh, LLP  
One Center Plaza, 8<sup>th</sup> Floor  
Boston, Massachusetts 02108

## APPENDIX I



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

IN THE MATTER

OF

KEVIN LOUGHLIN, M.D.

STATEMENT  
OF  
CHARGES

KEVIN LOUGHLIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 3, 1976, by the issuance of license number 129481 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about December 20, 2018, the Commonwealth of Massachusetts, Board of Registration in Medicine Issued a Consent Order whereby the Respondent's license was reprimanded, and a permanent license restriction was imposed that prohibits the Respondent from the clinical practice of medicine. The Massachusetts Board's action was based upon a finding that the Respondent committed negligence on repeated occasions involving his care and treatment of two patients.

B. Respondent's conduct as described above, upon which the disciplinary action in Massachusetts was based would, if committed in New York State, constitute professional misconduct under the laws of the State of New York as follows:

1. New York Education Law §6530 (3) (practicing the profession with negligence on more than one occasion)..

**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(8)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B.

DATE: December 24, 2019  
Albany, New York

  
TIMOTHY J. MAHAR  
Deputy Counsel  
Bureau of Professional Medical Conduct