



Department of Health

ANDREW M. CUOMO
Governor

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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

September 14, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Canchola, M.D.


Marc. S. Nash, Esq.
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Daniel Canchola, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.20-233) 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.

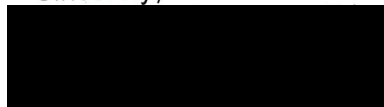
The notice of review served on the Administrative Review Board should be forwarded to:

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: cmg
Enclosure

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

COPY

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IN THE MATTER	:	DETERMINATION
	:	
OF	:	AND
	:	
DANIEL CANCHOLA, M.D.	:	ORDER
	:	BPMC-20-233

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In accordance with Public Health Law (PHL) §230, and the New York State Administrative Procedure Act (SAPA) Article 3, a hearing was held by videoconference on August 13, 2020. Pursuant to PHL §230(10)(e), William P. Dillon, M.D., Chairperson, Richard F. Kasulke, M.D., and Paul J. Lambiase, duly designated members of the State Board for Professional Medical Conduct (BPMC), served as the Hearing Committee in this matter. Jean T. Carney, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Associate Counsel Marc S. Nash. The Respondent failed to appear¹. Jurisdiction over the Respondent was obtained by personal service of the Commissioner's Order of Summary Action, Notice of Referral Proceeding, and Statement of Charges. The Hearing Committee received and examined documents from the Department (Exhibits 1-5). A stenographic reporter prepared a transcript of the

¹ The Respondent was personally served, and was given information on how to participate at the hearing remotely; but failed to make any attempt to participate. The hearing proceeded in his absence. (Exhibits 1 and 2; Transcript @ p.7)

proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that the Respondent committed professional misconduct in violation of Educ. Law §6530(9)(d); and that pursuant to PHL §230-a, the penalty of revocation 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)(d), having had disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in such action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

Under PHL §230(10), the Department had 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. The Respondent was authorized to practice medicine in New York State on November 15, 2010, by the issuance of license number 259361. (Exhibit 3).

2. On October 17, 2019, the Respondent executed an Agreed Order with the Texas Medical Board (TX Board) wherein he was found to have engaged in the improper practice of telemedicine. Specifically, the Respondent failed to maintain copies of medical records that he reviewed to determine the medical necessity of durable medical equipment (DME) and/or genetic testing; he failed to personally examine any patients whose records he reviewed; he failed to conduct any video or audio evaluation for any patients in this part of his medical practice; and he ordered medically unnecessary DME. (Exhibit 4).

3. The TX Board has suspended the Respondent's license to practice medicine until he applies for reinstatement and can prove to the TX Board's satisfaction that he is physically, mentally, and otherwise competent to practice medicine. (Exhibit 4).

VOTE OF THE HEARING COMMITTEE

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

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATIONS

The Department met its burden of proving by a preponderance of the evidence that the Respondent committed professional misconduct as alleged in the Statement of

Charges. The evidence shows that the Respondent had disciplinary action taken by the TX Board wherein his license was suspended indefinitely for practicing the profession with negligence on more than one occasion; and for failing to maintain records which accurately reflects the evaluation and treatment of his patients. If committed in New York State, the Respondent's actions would establish professional misconduct pursuant to Educ. Law §§6530(3) and 6530(32). The committee concludes that the Respondent's actions constitute professional misconduct as defined in Educ. Law §6530(9)(d).

In considering the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties; the Hearing Committee noted that the Respondent failed to respond to the charges, despite being given the opportunity to do so. The Hearing Committee considered the serious nature of the charges, that the Respondent's conduct evinced a severe lack of ethics, and placed the public at risk of harm. The Hearing Committee agrees with the Department's recommendation that the Respondent's medical license in New York State be revoked pursuant to PHL §230-a.

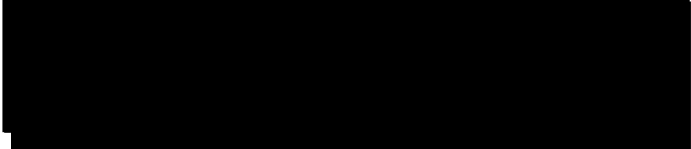
ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct as set forth in the Statement of Charges is sustained;
2. The Respondent's license to practice medicine is revoked; 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
SEP. 8TH, 2020



William P. Dillon, M.D., Chairperson
Richard F. Kasulke, M.D.
Paul J. Lambiase

To: Daniel Canchola, M.D.



Marc S. Nash, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX A

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

IN THE MATTER
OF
DANIEL CANCHOLA, M.D.

STATEMENT
OF
CHARGES

DANIEL CANCHOLA, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 5, 2010, by the issuance of license number 259361 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 18, 2019, Respondent and the Texas Medical Board (hereinafter, "Texas Board") entered into an Agreed Order of Suspension (hereinafter, "Order"), which suspended Respondent's medical license until such time as Respondent adequately indicates to the Texas Board that he is physically, mentally, and otherwise competent to practice medicine. This Order was issued pursuant to findings that: Respondent failed to maintain copies of medical records reviewed regarding the medical necessity of orders for durable medical equipment (hereinafter "DME"); failed to personally examine any patient as part of his review, but solely relied on the medical record to issue orders for patients; and on one occasion, Respondent ordered DME for a patient, yet the patient was not seen by the Respondent for any condition requiring the DME.

B. The conduct resulting in the Texas 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 § 6350(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

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:

1. The facts in Paragraphs A and B and B1 and/or A and B and B.2.

DATE: June 23, 2020
Albany, New York


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct