



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

June 24, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nathaniel White, Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

Daniel Nevarre, M.D.


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

Dear Parties:

Enclosed please find the Determination and Order (No. 21-127) 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:

Jean T. Carney, 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 Ms. Carney 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 solid black rectangular redaction box covering the signature of James F. Horan.

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

**IN THE MATTER
OF
DANIEL NEVARRE, M.D.**

DETERMINATION

AND

ORDER

BPMC-21-127

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct (“the Department”). A Notice of Referral Proceeding (“NORP”) and Statement of Charges (“SOC”), both dated March 5, 2021, were served upon Daniel Nevarre, M.D. (“Respondent”). Respondent filed an Answer, dated April 9, 2021. The NORP and SOC are attached to this Determination and Order as Appendix 1, and the Answer as Appendix 2. A hearing, pursuant to N.Y. Public Health Law (“PHL”) §230 and New York State Admin. Proc. Act §§301-307 and 401, was held via Cisco Webex on April 22, 2021.

Richard S. Goldberg, Esq., Chair, Kristin E. Harkin, M.D. and Jeffrey Perry, D.O., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (“Committee”) in this matter. Ann Gayle, Administrative Law Judge, served as the administrative officer. The Department appeared by Nathaniel White, Associate Counsel. Respondent appeared and represented himself. Evidence was received and a transcript of this hearing was made.

After consideration of the entire record, the Committee issues this Determination and Order; all findings, conclusions, and determinations herein are unanimous.

STATEMENT OF CASE

This case was brought pursuant to PHL §230(10)(p) which provides for a hearing with circumscribed issues when a licensee is charged with misconduct based upon a criminal

conviction under federal or state law and/or upon an administrative adjudication in another state regarding conduct that would amount to a crime and/or professional misconduct if committed in New York. N.Y. Education Law (“Educ. Law”) §6530(9). The scope of the hearing is limited to a determination of the penalty, if any, to be imposed upon the licensee. In the instant case, Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(a)(iii) for having been convicted of an act constituting a crime in another jurisdiction and §6530(9)(d) for having disciplinary action taken by another state.

FINDINGS OF FACT

Citations in parentheses, which refer to transcript page numbers (“T”) and exhibits (“Ex”) that were accepted into evidence, represent evidence found persuasive by the Committee in arriving at a particular finding.

1. On December 17, 2015, Respondent, Daniel Nevarre, M.D., was authorized by the issuance of license number 282549 by the New York State Education Department to practice medicine in New York State. Respondent’s license is currently active. (Ex 7)
2. On May 25, 2018, Respondent pled guilty to one count of False Information/Claims and one count of Insurance Fraud, in violation of 62 P.S. §1407(a)(1) and 18 Pa. C.S. §4117(a)(2), respectively, both third degree felonies. (Ex 8)
3. On July 16, 2018, the State Board of Medicine of the Commonwealth of Pennsylvania (“Pennsylvania Board”) accepted the disciplinary voluntary surrender of Respondent’s Pennsylvania Medical license, based on Respondent’s aforesaid May 25, 2018 criminal convictions. (Ex 10, page 20)
4. On October 16, 2018, Respondent was sentenced, following his aforesaid May 25, 2018 criminal convictions, to six months’ house arrest with electronic monitoring, thirty-six

months' probation, and requirements to pay \$288,974.00 in restitution, a \$5,000.00 civil penalty, and a \$300.00 fee. (Ex 8; Ex 9)

5. Subsequent to the aforesaid July 16, 2018 disciplinary voluntary surrender of his Pennsylvania medical license, Respondent, on March 20, 2019, submitted to the Pennsylvania Board an application for a license to practice medicine and surgery in the Commonwealth of Pennsylvania ("application") (Ex 10, page 19). On May 6, 2020, following a formal hearing held on August 9 and September 3, 2019, the Pennsylvania Board issued a Final Order denying Respondent's application. The Pennsylvania Board denied Respondent's application because Respondent was, *inter alia*: convicted of a felony relating to a health profession, guilty of unprofessional conduct by practicing the healing arts fraudulently, and guilty of immoral conduct by committing acts involving moral turpitude. (Ex 10)

CONCLUSIONS OF LAW

The Department charged Respondent with two Specifications of professional misconduct pursuant to Educ. Law §6530(9)(a)(iii) and (9)(d) for, respectively, having been convicted of committing an act constituting a crime under the laws of another jurisdiction which if committed in this state would have constituted a crime under New York state law, namely N.Y. Penal Law §177.05, and for having disciplinary action taken by another state where the conduct, if committed in New York state, would have constituted professional misconduct under the laws of New York state, namely N.Y. Educ. Law §6530(2), (9)(a)(i) or (iii), and (20).

Respondent argued that his conduct which he claims was "following the Medicare rules" was not a crime or misconduct in Pennsylvania and would not be a crime or misconduct in New York because following Medicare rules is not a crime. Respondent's convictions in Pennsylvania

were based on his guilty pleas. Those convictions would have been crimes under N.Y. Penal Law §177.05 if committed in New York.

The First Specification is sustained.

The Pennsylvania Board's denial of Respondent's license was based on Pennsylvania's definitions of misconduct including having been convicted of crimes, fraudulent medical practice, and immoral conduct. The acts constituting Respondent's convictions in Pennsylvania meet New York's definitions of misconduct, namely N.Y. Educ. Law §6530(2) (fraudulent practice), (9)(a)(i) or (iii) (convictions under state law), and (20) (moral unfitness).

The Second Specification is sustained.

DISCUSSION AND DETERMINATION AS TO PENALTY

The Department is seeking a revocation of Respondent's license on the basis that Respondent's "conduct was not a one-off thing. As you can see in the criminal information, it was repeated acts over the course of seven years ... between 2010 and 2017." (T 74)

When asked by the Committee, "What would you like us to do today?" Respondent replied, "I would like you to allow me to have a licensure in New York ... because the conduct that I am accused of is not a crime and it's not misconduct; not in New York, and not in Pennsylvania. If you don't see fit to allow me to be licensed, I just ask that you would allow my license to be expired and would not renew it." (T 61)

Respondent has not practiced medicine since 2017. When asked by the Committee if he felt his "skill set would be appropriate" Respondent replied, "yes, I do. I would –similar to how I agreed with the State of Utah– what is okay ... and not okay for me to do. I just wanted to open up a limited practice where I am just doing basically injectables [and perhaps repair, for example, a dog bite lacerations or a lump or a bump]. They said yes ... but if you were going to

do things more involved, we would just like to see a statement from another plastic surgeon that you did a review with them and then said your skills are good. And I don't mind the same with New York. But as a professional, I would never do anything that I am not trained to do or that I have the skills to do. You restrict yourself to that. I wouldn't, even if I could, go out and get a job, do a microvascular replantation, even though I had a fellowship in microvascular replantation because I haven't done it in many years and I don't feel skilled." (T 67-68)

The Pennsylvania Board denied Respondent's application for licensure after he had "voluntarily surrendered his license –disciplinary." Respondent surrendered that license in lieu of discipline (Ex 10, page 19). The Virginia Board indefinitely suspended Respondent's Virginia medical license based on the Pennsylvania convictions and disciplinary action taken (Ex 10, page 21). The Florida Board allowed Respondent to keep his Florida medical license, and the Utah Board issued a "Limited Active License" (Ex G).

Respondent's testimony consisted of his continued denial that he is guilty of the charges for which he was convicted. Respondent testified that he pled guilty "to block asset forfeiture as that was the only method available to me at the time to stop complete and permanent dismantling of myself and my family" (T 40-41). Respondent testified that he is pursuing having the convictions to which he pled guilty overturned and having his Pennsylvania license reinstated/granted. The Committee knows it does not need to await updates on the criminal convictions. The Committee is issuing an order now based on those convictions and the Pennsylvania Board's disciplinary action. Respondent would have the ability to petition this Board/OPMC (Office of Professional Medical Conduct) should the convictions be overturned and/or if the Pennsylvania Board reinstates/grants Respondent's Pennsylvania license.

The Committee does not take Respondent's serious misconduct lightly. The Committee,

in furtherance of its role to protect the public and the rights of licensees, determines that revocation is not necessary at this time. The Committee is fully and well aware that it is not bound by another board's actions and orders in making its determination as to penalty. The Committee determines that the appropriate penalty in New York State is a suspension of Respondent's license wholly until he demonstrates that Pennsylvania has reinstated/granted his Pennsylvania license and that he is compliant with all terms and conditions, if any, imposed by the Pennsylvania Board. Once Respondent has so demonstrated, the suspension would end and Respondent's New York license shall be subject to the same terms/conditions, if any, imposed by the Pennsylvania Board. The Committee carefully considered the additional penalties it could impose pursuant to PHL §230-a including: a limitation of Respondent's license for certain procedures (subsection 3); a requirement that Respondent pursue a course of education or training (subsection 8); placing Respondent on probation with or without a practice monitor commencing at the time he resumes practice in this state (after the suspension has been lifted) (subsection 9). The Committee determined that neither revocation nor the additional aforesaid penalties is warranted.

The Committee is fully and well aware that it need not defer to or rely upon another board's conditions or determinations for lifting the suspension of Respondent's New York license. However, this Committee strongly believes mirroring the Pennsylvania Board's conditions and actions, if any, (if/when it reinstates/grants Respondent's Pennsylvania license) is most appropriate for Respondent. Once again, the Committee is fully and well aware that when the New York suspension ends, it could—even if Pennsylvania does not impose any terms/conditions— impose: a limitation of Respondent's license for certain procedures (subsection 3); a requirement that Respondent pursue a course of education or training

(subsection 8); placing Respondent on probation with or without a practice monitor commencing at the time he resumes practice in this state (after the suspension has been lifted) (subsection 9), but is not doing so. Of course, if the Pennsylvania Board imposes any of the above, or more, those restrictions/requirements/limitations would be imposed in New York because the New York requirements will mirror Pennsylvania's.

The Committee believes the penalty it is imposing is ample protection of/for the public based on the Committee's ability, during the intense two hours that Respondent was before this Board, to weigh Respondent's demeanor and character. The Committee found Respondent to be well-trained and well aware of his abilities and skills, and the limitations thereof. The Committee believes Respondent would comply with any conditions imposed by Pennsylvania, and subsequently New York, and, if no conditions were imposed, that Respondent would, as he testified, not perform any medical procedures he knows/believes he is not capable of safely performing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The charge of misconduct under Educ. Law §6530(9)(a)(iii) for having been convicted of an act constituting a crime under the law of another jurisdiction is sustained.
2. The charge of misconduct under Educ. Law §6530(9)(d) for having disciplinary action taken by another state is sustained.
3. Pursuant to PHL §230-a(2)(e), Respondent's license to practice medicine shall be suspended wholly, until Respondent complies with the terms or conditions of a board order. The terms and conditions of this board order are:

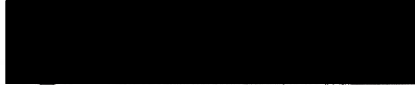
Respondent shall, at the time he seeks to practice medicine in New York, provide to the Director of OPMC documentation that Pennsylvania has reinstated Respondent's Pennsylvania medical license and documentation of his satisfactorily complying with all terms and conditions, if any, imposed by the Pennsylvania Board for such reinstatement. The identical terms and conditions, if

any, imposed by the Pennsylvania Board shall be imposed by this Board, and Respondent shall comply with this Board's orders, terms and conditions.

4. This Order shall be effective upon service on Respondent as required under PHL §230(10)(h).

DATED: Brooklyn, New York

June 8, 2021



RICHARD S. GOLDBERG, Esq., Chair
KRISTIN E. HARKIN, M.D.
JEFFREY PERRY, D.O.

To: Nathaniel White, Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237-0032

Daniel Nevarre, M.D.

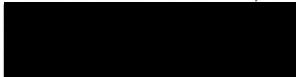


APPENDIX I

IN THE MATTER
OF
DANIEL NEVARRE, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: DANIEL NEVARRE, M.D.



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 22, 2021 at 10:30 a.m., at the offices of the New York State Department of Health, 90 Church Street, Fourth Floor, New York, NY 10007 or by video conference as directed by the Administrative Law Judge, and at such other adjourned dates, times and places as the committee may direct.

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, or by video conference if directed by the Administrative Law Judge, 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 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
March 5, 2021


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Nathaniel White
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
DANIEL NEVARRE, M.D.

STATEMENT
OF
CHARGES

DANIEL NEVARRE, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 17, 2015 by the issuance of license number 282549 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 25, 2018, in the Court of Common Pleas - Criminal, Cambria County, Pennsylvania, the Respondent pleaded guilty to one count of False Information/Claims, a third degree felony in violation of 62 P.S. §1407(a)(1), and one count of Insurance Fraud, a third degree felony, in violation of 18 Pa. C.S. §4117(a)(2). On or about October 16, 2018, the Respondent was sentenced to six months of house arrest with electronic monitoring, thirty-six months of probation, a requirement to pay \$288,974.00 in restitution, a civil penalty of \$5,000.00 paid to the Pennsylvania Insurance Fraud Prevention Authority, and a \$300.00 fee paid to the Special Administration Fund Account.

B. The conduct resulting in the Pennsylvania conviction against the Respondent would constitute a crime under the laws of New York State pursuant to the following section of New York State law:

1. New York Penal Law § 177.05 (Health care fraud in the fifth degree).

C. On or about May 6, 2020, the Pennsylvania State Board of Medicine (Pennsylvania Board) denied Respondent's application for license to practice medicine and surgery in Pennsylvania. Following a formal hearing held on August 9 and September 3, 2019, a hearing examiner issued a Proposed Adjudication and Order dated December 19, 2019 that was incorporated into a Final Order dated May 6, 2020. The Pennsylvania Board concluded that the Board was authorized to deny the Respondent's application for license because the Respondent was convicted of a felony or misdemeanor relating to a health profession pursuant to 63 P.S. § 422.41(3); and because the Respondent was guilty of unprofessional conduct by practicing the healing arts fraudulently pursuant to 49 Pa. Code § 16.61(a)(6); and because the Respondent was guilty of immoral conduct by committing acts involving moral turpitude pursuant to 49 Pa. Code § 16.61(b)(2), among other reasons.

D. The conduct resulting in the Pennsylvania Board's decision to refuse Respondent's application for a license to practice medicine and surgery would constitute misconduct under the laws of New York State pursuant to the following sections of New York State law:

1. New York Education Law section 6530(9)(a)(i) and/or (iii) (being convicted of committing an act constituting a crime under New York State law or the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State law);
2. New York Education Law section 6530(2) (practicing the profession fraudulently); and/or
3. New York Education Law section 6530(20) (conduct in the practice of medicine which evidences moral unfitness to practice medicine).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (namely N.Y. Penal Law § 177.05) as alleged in the facts of the following:

1. Paragraphs A and B.

SECOND SPECIFICATION

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[9][a][i] and/or [iii], [2] and/or [20]) as alleged in the facts of the following:

2. Paragraphs C and D.

DATE: March 5, 2021
Albany, New York



TIMOTHY MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct