



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

November 21, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jagadishwar Devkota, M.D.


Ian H. Silverman, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Jagadishwar Devkota, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-239) 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 box redacting the signature of the Chief Administrative Law Judge.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF : AND
JAGADISHWAR DEVKOTA, M.D. : ORDER
-----X
BPMC-23-239

A Notice of Referral Proceeding and Statement of Charges dated September 19, 2023, were duly served upon Jagadishwar Devkota, M.D. (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). (Exhibits 1, 2, 6.) A hearing was held on November 16, 2023, via WebEx videoconference. Pursuant to PHL § 230(10)(e), **JOSE M. DAVID, M.D.**, Chairperson, **ELAINE L. WILK, D.O.**, and **SARA AOUN, P.A.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **NATALIE BORDEAUX**, Administrative Law Judge (ALJ), served as the administrative officer.

The Department appeared by Ian H. Silverman, Associate Counsel. The Respondent did not appear. The Hearing Committee received and examined documents from the Department (Exhibits 1-6). A transcript of the proceeding was made. After consideration of the entire hearing record, the Hearing Committee hereby issues this Determination and Order, sustaining the charge and revoking the Respondent's medical license. All findings, conclusions, and determinations are unanimous.

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 Education Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(d), having disciplinary action taken against his medical license in Virginia, or having voluntarily or otherwise surrendered

his license after a disciplinary action was instituted by a duly authorized professional agency of that state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York on September 26, 1975, under license number 125506. (Exhibit 3.)

2. On November 1, 2022, the Respondent entered into a Consent Order with the Virginia Board of Medicine (Virginia Board), in which he agreed that he had violated Virginia Code § 54.1-2915(A)(3), intentional or negligent conduct in the practice of any branch of the healing arts that causes or is likely to cause injury to a patient or patients; Virginia Code § 54.1-2915(A)(4), having a mental or physical incapacity or incompetence to practice the profession safely; and Virginia Code § 54.1-2915(A)(13), conducting his practice in such a manner as to be a danger to the health and welfare of his patients or to the public. The Respondent's admissions were made after an expert radiologist with an added qualification in neuroradiology retained by the Virginia Board found that, in 164 of 171 cases reviewed by the Respondent from July through December 2014, the Respondent's radiological interpretations fell below the standard of care. Pursuant to the Consent Order, the Respondent is permanently restricted from performing any radiological services in Virginia. (Exhibit 4.)

DISCUSSION

Although duly notified of the date, time and place of the hearing, the Respondent did not appear on his own behalf or by representative. After due diligence and certified under oath, on September 11, 2023, a process server attempted to personally serve the Respondent with the Notice

of Referral Proceeding and Statement of Charges at his last known address, but was informed that the Respondent had not lived at that address for 10 years. (Exhibits 1-2.) The Department then sent the Respondent the Notice of Referral Proceeding and Statement of Charges to the Respondent's last known address on file with the New York State Education Department on October 3, 2023 via certified mail. (Exhibits 5-6.) Service of the Notice of Referral Proceeding and Statement of Charges was properly effectuated pursuant to PHL § 230(10)(d). Upon the Department having established jurisdiction and proper notice, the ALJ determined that the hearing could proceed on the merits despite the Respondent's absence.

The Respondent entered into a Consent Order with the Virginia Board to resolve charges that while employed at a Department of Veterans Affairs (VA) Hospital, 164 of 171 of his interpretations of magnetic resonance imaging (MRI) scans, computerized tomography scans, and radiographs from July through December 2014 fell below the standard of care. The Respondent waived his rights to contest the charges. (Exhibit 4.)

The Hearing Committee agreed that the Respondent's conduct resulting in the Virginia Board's disciplinary action would, if committed in New York, constitute misconduct pursuant to Education Law § 6530(3), practicing the profession with negligence on more than one occasion. The Hearing Committee thus determined that the Respondent violated Education Law § 6530(9)(d).

After determining to sustain the charge, the Hearing Committee considered all possible penalties authorized by PHL § 230-a, and agreed with the Department's recommendation that revocation of the Respondent's license was warranted. Before referring the case to the Virginia Board, the VA's own review determined that the Respondent had failed to identify indicia of conditions, including, but not limited to, malignancies, aneurysms, torn ligaments, bone fractures, and arterial stenosis, or that he had incorrectly diagnosed conditions that were not present, and that

43 of those interpretations posed a potential clinical impact. The Hearing Committee found the volume of errors identified by both the VA and the Virginia Board, and which the Respondent did not dispute, deeply disturbing, particularly considering the short period of time reviewed. The Respondent's error rate was nearly 100%, with over 25% of those errors posing serious risks to patient care. For these reasons, the Hearing Committee concluded that revocation of the Respondent's medical license was the only appropriate penalty.


ORDER

IT IS HEREBY ORDERED THAT:

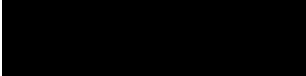
1. The charge of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent's license to practice medicine is revoked pursuant to PHL § 230-a(4).
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: November 20, 2023

Albany, New York


Jose M. David, M.D., Chairperson
Elaine L. Wilk, D.O.
Sara Aoun, P.A.

To: Jagadishwar Devkota, M.D.


Ian H. Silverman, Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

IN THE MATTER
OF
JAGADISHWAR DEVKOTA, M.D.

STATEMENT
OF
CHARGES

JAGADISHWAR DEVKOTA, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 26, 1975, by the issuance of license number 125506 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about November 1, 2022, the Virginia Board of Medicine (Virginia Board) entered into a Consent Order with the Respondent, whereby the Respondent was permanently restricted from performing any radiological services in Virginia. The Virginia Board Order was based on a review conducted by the Department of Veterans Affairs into 171 of Respondent's cases. The review of Respondent's cases found that Respondent failed to identify indicia of conditions including, but not limited to, malignancies, aneurysms, torn ligaments, bone fractures, and arterial stenosis, or that he had incorrectly diagnoses conditions that were not present.

- B. Respondent's conduct as described above 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
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) as alleged in the facts of the following:

1. The facts in Paragraph A and B.

DATE: September 19, 2023
Albany, New York


Jeffrey J. Conklin
Deputy Director
Bureau of Professional Medical Conduct