

November 27, 2012

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Subhajt Datta, M.D.
REDACTED

Re: License No. 205639

Dear Dr. Datta:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-261. This order and any penalty provided therein goes into effect December 4, 2012.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED
Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Mark R. Uba, Esq.
5500 Main Street, Suite 204
Williamsville, NY 14221

**IN THE MATTER
OF
SUBHAJIT DATTA, M.D.**

CONSENT
ORDER

Upon the application of (Respondent) Subhajit Datta, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and

it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board,

either

by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR

upon facsimile transmission to Respondent or Respondent's attorney,

whichever is first.

SO ORDERED.

DATE: 11/26/2012

REDACTED

ARTHUR S. HENGERER, M.D.

Chair

State Board for Professional Medical Conduct

IN THE MATTER
OF
SUBHAJIT DATTA, M.D.

CONSENT
AGREEMENT
AND
ORDER

Subhajit Datta, M.D., represents that all of the following statements are true:

That on or about January 21, 1997, I was licensed to practice as a physician in the State of New York, and issued License No. 205639 by the New York State Education Department.

My current address is REDACTED, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I assert that I cannot successfully defend against at least one act of misconduct alleged against me. Therefore, in full satisfaction of the charges against me, I agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(6), I agree to never renew my registration in New York State in the future.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order.

Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to N.Y. Pub. Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive

my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE

11/17/12

REDACTED

SUBHAJIT DATTA, M.D.

RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 11/19/2012

REDACTED

MARK R. UBA, ESQ.
Attorney for Respondent

DATE: 11/20/2012

REDACTED

VALERIE B. DONOVAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/21/12

REDACTED

~~KEITH W. SERVIS~~
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
SUBHAJIT DATTA, M.D.

STATEMENT
OF
CHARGES

SUBHAJIT DATTA, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 1, 1997, by the issuance of license number 205639 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. From around April 2008 through May 2008, Respondent provided medical care to Patient A (patients are identified by name in Appendix A), admitted to Erie County Medical Center, Buffalo, New York who presented with a mediastinal mass and atelectasis of the lung. Respondent operated on Patient A and resected the tumor on cardiopulmonary bypass (CPB) with double coronary artery bypass graft (CABG). Respondent's care of Patient A deviated from accepted standards of medical care as follows:

1. Respondent's evaluation, surgical planning and documentation regarding Patient A was inadequate and incomplete.

2. Respondent failed to refer Patient A to a medical facility with experience in cardiac tumors, with ability to perform root resection and/or reconstruction of the left atrium, and/or with in-house ventricular support and transplantation capabilities.

B. From around November 15, 2005 through around December 17, 2005, Respondent provided medical care to Patient B, who presented to Erie County Medical Center with recurrence of cancer of the right lung with invasion of the chest wall, apex of the chest and possible invasion of the brachial plexus. Patient B underwent a complete pneumonectomy with brachial plexus dissection and chest wall resection by Respondent.

Respondent's care of Patient B deviated from accepted standards of medical care as follows:

1. Respondent delayed treating Patient B's post pneumonectomy pulmonary edema, inadequately managed the right post pneumonectomy infected space, and/or failed to consult with a pulmonologist.
2. Respondent inappropriately discharged Patient B while she was still unstable.

C. On or around July 28, 2004, Respondent provided medical care to Patient C, who presented to Erie County Medical Center with right sided heart failure and severe tricuspid insufficiency following prior mitral valve replacement and coronary artery bypass grafting. Patient C underwent a redo sternotomy, femoral cannulation for cardiopulmonary bypass, and

tricuspid valve annuloplasty by Respondent. Respondent's care of Patient C deviated from accepted standards of medical care as follows:

1. Respondent failed to diagnose an aortic dissection at the initiation of the cardiopulmonary bypass and thereby administered inappropriate treatment to Patient C.
2. Respondent inappropriately transferred Patient C, who was unstable, to another facility.

D. In or around June 2008, Respondent provided medical care to Patient D, who presented to Sisters of Charity Hospital, Buffalo, with a pericardial effusion. Respondent performed a pericardial window for drainage on Patient D, and provided fluid for cytology, culture, cell count and chemistries as well as a biopsy of the pericardium. Respondent's care of Patient D deviated from accepted standards of medical care in that Respondent failed to inform Patient D of the biopsy and cytology results, which indicated the presence of malignant epithelial cells in the pericardial fluid compatible with adenocarcinoma.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the following:

1. The facts of paragraphs A and A.1, and A and A.2.
2. The facts of paragraphs B and B.1, and B and B.2.
3. The facts of paragraphs C and C.1, and C and C.2.
4. The facts of paragraph D.

FIFTH THROUGH EIGHTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(6) by practicing the profession of medicine with gross incompetence as alleged in the following:

5. The facts of paragraphs A and A.1, and A and A.2.
6. The facts of paragraphs B and B.1, and B and B.2.
7. The facts of paragraphs C and C.1, and C and C.2.
8. The facts of paragraph D.

NINTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the following:

9. The facts in paragraphs A and A.1, A and A.2, B and B.1, B and B.2, C and C.1, C and C.2, and/or D.

TENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of:

10. The facts in paragraphs A and A.1, A and A.2, B and B.1, B and B.2, C and C.1, C and C.2, and/or D.

ELEVENTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

11. The facts in paragraphs A and A.1.

DATE: ^{Nov.} ~~October~~ 20, 2012
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct