

NEW YORK
state department of
HEALTH

Public

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

May 28, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mukesh Garg, M.D.
REDACTED

Paul Tsui, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Amy Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, 720
Garden City, New York 11530

RE: In the Matter of Mukesh Garg, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-137) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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 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,

REDACTED

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

IN THE MATTER
OF
MUKESH GARG, M.D.
CO-12-12-6156-A

DETERMINATION
AND
ORDER

RPMC 14-137

A hearing was held on April 24, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Hearing dated January 13, 2014 and Statement of Charges dated January 15, 2014, were served upon the Respondent, Mukesh Garg, M.D. Pursuant to Section 230(10)(e) of the Public Health Law, Virginia R. Marty, Chairperson, Jonathan Ecker, M.D. and James G. Egnatchik, M.D. duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Christine C. Traskos, Esq. Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by James Dering, Esq., General Counsel, by Paul Tsui, Esq. of Counsel. The Respondent appeared and was represented by Jacobson, Goldberg & Kulb, LLP, by Amy Kulb Esq. of Counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This proceeding was brought pursuant to Public Health Law Section 230(10). The statute provides for an expedited hearing when a licensee is charged with a violation of

Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In this case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(iii) and Education Law Section 6530(9)(d).

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix I.

WITNESSES

For the Petitioner:

None

For the Respondent:

Mukesh Garg, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Mukesh Garg, M.D., the Respondent was duly served and appeared at the hearing with counsel. (Petitioner's Exs.2 and 3)

2. Mukesh Garg, M.D., the Respondent, was authorized to practice medicine in New York State on July 29, 2010 by the issuance of license number 258080 by the New York State Education Department. (Petitioner's Ex. 4)

3. On September 27, 2012, Respondent was found guilty of Driving Under the Influence of Alcohol (Tier III, 2nd offense; general impairment with refusal [a misdemeanor]) based on a plea of Nolo Contendere in the Bradford County, Pennsylvania Court of Common Pleas. On November 1, 2012, Respondent was sentenced to a period of incarceration of no less than 90 days and no more than 18 months in the Bradford County Correctional Facility, a \$1,500.00 fine, a \$200.00 surcharge, attendance at a Victim Impact Panel, 24 hours service to the DUI litter brigade, and compliance with all recommendations of a CRN evaluation. Respondent was granted credit for 65 days in in-patient alcohol treatment and one day for time previously served. (Petitioner's Ex.8)

4. On July 30, 2013, based upon the Pennsylvania conviction, the Missouri State Board of Registration for the Healing Arts (hereinafter, "Missouri Board") issued a Settlement Agreement (hereinafter, "Missouri Order"), placing Respondent's License No.108215 on probation for five (5) years subject to certain terms and conditions including enrollment in and completion of the Missouri State Medical Association's Physician Health Program (MPHP) or the Missouri Association of Osteopathic Physicians and Surgeons Program (MAOPS) submitting to a multi-disciplinary evaluation by a Board-approved facility, abstaining from the use or possession of controlled substances and dangerous drugs or any drugs requiring a prescription unless prescribed and administered by a physician, abstaining from the use or consumption of alcohol, and random body fluid and hair testing. (Petitioner's Ex.9, Respondent's Ex. D)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION OF MISCONDUCT

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken against his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another 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 State.

VOTE: Sustained (3-0)

SECOND SPECIFICATION OF MISCONDUCT

Respondent violated New York Education Law §6530(9)(a)(iii) having been convicted of an act constituting a crime under the laws of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State law.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

Respondent testified that he entered the Marworth Rehabilitation Facility in Pennsylvania in the summer of 2012 and successfully completed the program. (Resp. Ex. B; T. 18-21) Respondent stated that his 2 months at Marworth provided him with insight about how he had lived his life. Respondent said that his past goals focused on self-seeking accomplishments that included lecturing along with publishing peer reviewed articles every month. The stress of this lifestyle caused him to abuse alcohol. Respondent testified that he experienced a psychic change

in his way of thinking. He now places service to others above striving for personal achievement. (T. 21, 43-44) Respondent contends that he has maintained his sobriety for the past two years. He attends a physician self-help group in the state of Nebraska where he is currently employed and he continues with AA meetings. (Resp. Exs. E,F,G and H) Respondent further asks that he not be unduly sanctioned for his past misconduct as this will affect his hospital privileges and would disqualify his participation in the Medicaid program.

The Hearing Committee finds Respondent to be an accomplished physician. They note that Respondent's recognition that alcohol is a life-long problem is significant to his continued recovery. The evidence in the record demonstrates that to date, Respondent remains in full compliance with the probationary terms mandated by the states of Missouri and Nebraska. Based on Respondent's progress in the past 2 years, the Hearing Committee rejects the Department's argument for revocation or indefinite suspension as too harsh. Respondent testified that he has no intention to practice medicine in New York State. If he decides otherwise, the Hearing Committee believes that the public is best protected by placing Respondent's license on probation for a period of five (5) years with a sobriety monitor. The entire probation period shall be tolled until such time as Respondent elects to practice in New York State. The terms of probation are attached hereto as Appendix II and are incorporated into this Order.

The Hearing Committee concludes that Respondent's license to practice medicine in New York State should be placed on probation for five (5) years with a sobriety monitor. This determination was reached after due consideration of the full

spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**;
2. Respondent's license to practice medicine in New York State is placed on a term of probation for **FIVE (5) YEARS**. The terms of the probation are attached hereto as Appendix II and are incorporated into this Order;
3. This Order shall be effective upon service on the Respondent by personal service or registered or certified mail in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Marcellus, New York

May 24, 2014

REDACTED

Virginia R. Marty
Chairperson



Jonathan Ecker, M.D.
James G. Egnatchik, M.D.

TO:

Mukesh Garg, M.D.

REDACTED

Paul Tsui, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower- Rm. 2512
Empire State Plaza
Albany, NY 12237

Amy Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, 720
Garden City, NY 11530

APPENDIX I

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

IN THE MATTER
OF
MUKESH GARG, M.D.
CO-12-12-6156-A

NOTICE OF
REFERRAL
PROCEEDING

TO: Mukesh Garg, M.D.
Baron Cardiology Group, PC
1242 E. Independence St.
Springfield, MO 65804

Mukesh Garg, M.D.

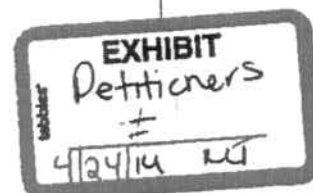
REDACTED

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures 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 the 20th day of March, 2014, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/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 that 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 F. HORAN, ACTING 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 ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) 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. The answer 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. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. 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 New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) 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 (5) 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.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

JAN. 13, 2014

REDACTED

~~MICHAEL A. HISER~~
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

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

IN THE MATTER
OF
MUKESH GARG, M.D.
CO-12-12-6156-A

STATEMENT
OF
CHARGES

MUKESH GARG, M.D., Respondent, was authorized to practice medicine in New York State on July 29, 2010, by the issuance of license number 258080 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 27, 2012, Respondent was found guilty of Driving Under the Influence of Alcohol (Tier III, 2nd offense; general impairment with refusal [a misdemeanor]) based on a plea of Nolo Contendere in the Bradford County, Pennsylvania Court of Common Pleas. On or about November 1, 2012, Respondent was sentenced to a period of incarceration of no less than 90 days and no more than 18 months in the Bradford County Correctional Facility, a \$1,500.00 fine, a \$200.00 surcharge, attendance at a Victim Impact Panel, 24 hours service to the DUI litter brigade, and compliance with all recommendations of a CRN evaluation. Respondent was granted credit for 65 days in in-patient alcohol treatment and one day for time previously served.
- B. On or about July 30, 2013, based upon the Pennsylvania conviction, the Missouri State Board of Registration for the Healing Arts (hereinafter "Missouri Board") issued a Settlement Agreement (hereinafter, "Missouri Order"), inter alia, placing Respondent's License No 108215 on probation for five (5) years subject to certain terms and conditions including enrollment in and completion of the Missouri State Medical Association's Physician Health Program (MPHP) or the Missouri Association of Osteopathic Physicians and Surgeons Program (MAOPS) submitting to a multi-disciplinary evaluation by a Board-approved facility, abstaining from the use or possession of controlled substances and dangerous drugs or any drugs requiring a

prescription unless prescribed and administered by a physician, abstaining from the use or consumption of alcohol, and random body fluid and hair testing.

C. The conduct resulting in the Missouri Board's disciplinary action against Respondent 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 §6530(8) (Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except for a licensee who is maintained on an approved therapeutic regimen which does not impair the ability to practice, or having a psychiatric condition which impairs the licensee's ability to practice).

2. New York Education Law §6530(9)(a)(iii) (Being 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).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken against his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws New York State, in that Petitioner charges:

1. The facts in Paragraphs B and C. 1 and/or C. 2.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) having been convicted of an act constituting a crime under the laws of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

2. The facts in Paragraphs A.

DATED: JAN. 15, 2014
Albany, New York

REDACTED

~~_____
MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct~~

APPENDIX II

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), 150 Broadway Suite 355, Menands, New York 12204-2719. Said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State, Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall provide the Director of OPMC with 90 days' notice prior to his return to practice medicine in New York State.

8. Respondent shall remain drug/alcohol free.
9. Respondent shall remain active in self-help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.
10. Respondent shall notify all treating physicians of his history of alcohol/chemical dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
11. Respondent shall practice only when monitored by a qualified **sobriety monitor** proposed by Respondent and approved, in writing, by the Director of OPMC. The monitor shall not be a family member or personal friend, or be in professional relationship which would pose a conflict with monitoring responsibilities.
12. Respondent shall ensure that the monitor is familiar with Respondent's drug/alcohol history and with the terms of this Order. Respondent shall cause the monitor to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
13. Respondent shall submit, at the request of the monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.
14. Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include a) forensically valid results of all drug/alcohol; monitoring tests to be performed at a frequency of no less than six (6) per month for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC and b) an assessment of self-help group attendance (e.g., AA/NA/Caduceus, etc.), 12 step progress, etc.
15. Respondent shall avoid all substances which may cause positive urines such as herbal tea, poppy seeds, mouthwash or cough medication. Any positive result will be considered a violation of this Order.
16. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs

related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.