

NEW YORK
state department of
HEALTH

Public

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

Sue Kelly
Executive Deputy Commissioner

August 20, 2014

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dharam P. Garg, M.D.
3218 Walden Avenue
Depew, NY 14043

Re: License No. 157914

Dear Dr. Garg:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 14-209. This order and any penalty provided therein goes into effect August 27, 2014.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: c/o Physician Monitoring Unit, NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719.

If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. Our office is unable to store framed licenses.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719, telephone # (518)402-0855.

Sincerely,

REDACTED

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

cc: Herbert L. Greenman, Esq.
Lipsitz, Green, Scime & Cambria, LLP
42 Delaware Avenue, Suite 120
Buffalo, NY 14202-3924

Enclosure

IN THE MATTER
OF
DHARAM GARG, M.D.

SURRENDER
ORDER

Upon the application of **DHARAM GARG, M.D.** to Surrender his license to practice medicine in the State of New York, which is made a part of this Surrender Order, it is

ORDERED, that the Surrender, and its terms, are adopted and it is further

ORDERED, that Respondent's name be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Surrender Order shall be effective upon issuance by the Board, either by mailing of a copy of this Surrender Order, either by first class mail to Respondent at the address in the attached Surrender of License or by certified mail to Respondent's attorney, or upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 8/19/2014

REDACTED

ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

**IN THE MATTER
OF
DHARAM GARG, M.D.**

SURRENDER
OF
LICENSE
AND
ORDER

DHARAM GARG, M.D., represents that all of the following statements are true:

That on or about April 9, 1984, I was licensed to practice as a physician in the State of New York, and issued License No. 157914 by the New York State Education Department.

My current address is 3218 Walden Avenue, Depew, New York 14043, 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", which is attached to and part of this Surrender of License.

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York, on the grounds that I do not contest the Thirtieth Specification as it relates to Factual Allegations E and E.1, E and E.2, E and E.3 and E and E.4 in full satisfaction of all charges against me.

I ask the Board to accept my Surrender of License, and I agree to be bound by all of the terms set forth in attached Exhibit "B".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged; this application 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 the Public Health Law.

I agree that, if the Board accepts my Surrender of License, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender 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(s). OPMC shall report this action to the National Practitioner Data Bank, the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I ask the Board to accept this Surrender of License, which I submit of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, 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 Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

The undersigned agree to Respondent's attached Surrender of License and Order and to its proposed penalty, terms and conditions.

DATE: 8/13/14

REDACTED

HERBERT L. GREENMAN, ESQ.
Attorney for Respondent

DATE: 8/15/14

REDACTED

MICHAEL G. BASS
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: 8/15/14

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

**IN THE MATTER
OF
DHARAM GARG, M.D.**

**STATEMENT
OF
CHARGES**

DHARAM GARG, M.D., Respondent, was authorized to practice medicine in New York state on or about April 9, 1984, by the issuance of license number 157914 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (patients are identified in the attached appendix), a 49 year old female, at 3218 Walden Avenue, Depew, New York 14043 and/or 2324 Bowen Road, Elma, New York 14059 [hereinafter "Respondent's Office"], at various times from on or about November 3, 1998, to on or about November 9, 2012. Patient A's primary complaint was chronic low back pain. Respondent's care and treatment of Patient A failed to meet accepted standards of medical practice in that:

1. Respondent, on multiple occasions at Respondent's Office from on or about January 13, 2012, to on or about November 9, 2012, engaged in sexual contact with Patient A.
2. Respondent, on multiple occasions from on or about January 18, 2008, to on or about November 9, 2012, did not take an appropriate level of history from Patient A, and/or failed to document such history.
3. Respondent, on multiple occasions from on or about January 18, 2008, to on or about November 9, 2012, failed to perform appropriate examinations of Patient A, and/or failed to document such examinations.
4. Respondent, throughout his treatment of Patient A, failed to enter into a pain management contract with Patient A.
5. Respondent, from on or about January 18, 2008, to on or about November 9, 2012, made no or insufficient attempts at treating Patient A with non-controlled

modalities.

6. Respondent, on or about November 9, 2012, falsely documented his treatment of Patient A.
7. Respondent, on multiple occasions from on or about January 29, 2010, to on or about November 9, 2012, prescribed Patient A multiple controlled substances without medical justification, and/or failed to document such justification.
8. Respondent, throughout his treatment of Patient A, failed to refer Patient A to psychological counseling, and/or failed to document such referral.

B. Respondent provided medical care for Patient B, a 31 year old female, at Respondent's Office, at various times from on or about May 17, 2008 to on or about April 18, 2011. Patient B reported having been in a car accident and suffering from neck pain. Respondent's care and treatment of Patient B failed to meet accepted standards of medical practice in that:

1. Respondent, on multiple occasions throughout his treatment of Patient B, prescribed Patient B Lortab without adequate medical justification.
2. Respondent, throughout his treatment of Patient B, made no or insufficient attempts at treating Patient B with non-controlled modalities.
3. Respondent, throughout his treatment of Patient B, failed to refer Patient B to a pain management specialist.
4. Respondent, at Respondent's Office on or about April 13, 2011, subjected Patient B to sexual contact.

C. Respondent provided medical care for Patient C, a 34 year old female, at Respondent's Office, at various times from on or about November 8, 2010, to on or about November 29, 2010. Patient had complained of back and knee pain from a fall. Respondent's care and treatment failed to meet accepted standards of medical practice in that:

1. Respondent, at Respondent's Office on or about November 29, 2010, subjected Patient C to sexual contact.
2. Respondent, on or about November 8, 2010, failed to perform an adequate examination of Patient C, and/or failed to document such examination.
3. Respondent, on or about November 29, 2010, failed to adequately address Patient C's history of depression.

4. Respondent, on or about November 29, 2010, examined Patient C's spine in an inappropriate manner.

D. Respondent provided medical care for Patient D, a 39 year old female, at Respondent's Office, at various times from on or about November 20, 2004, to on or about April 20, 2012. Patient D's medical history included knee and back pain resulting from an automobile accident. Respondent's care and treatment of Patient D failed to meet the accepted standards of medical practice in that:

1. Respondent, on multiple occasions from on or about July 29, 2010, to on or about November 4, 2012, prescribed Patient D Phentermine without adequate medical rationale.
2. Respondent, on multiple occasions from on or about July 29, 2010, to on or about November 4, 2012, prescribed Patient D Phentermine without noting the prescription in Patient D's medical record.

E. Respondent provided medical care for Patient E, a 53 year old male, at Respondent's Office, at various times from on or about March 22, 1994, to on or about November 6, 2012. Patient E had presented with arm and back pain from a fall at home. Respondent's care and treatment of Patient E failed to meet accepted standards of medical practice in that:

1. Respondent, on multiple occasions throughout his treatment of Patient E, failed to conduct an adequate history and physical assessment of Patient E, and/or failed to document such history and physical assessment.
2. Respondent, on multiple occasions throughout his treatment of Patient E, prescribed Patient E Lortab without adequate medical rationale.
3. Respondent, on or about October 26, 2010, improperly prescribed Patient E controlled substances one day after Patient E told Respondent he was going to kill himself, or words to that effect.
4. Respondent, on or about October 23, 2007, prescribed Patient E Cialis without taking into consideration the risk of prescribing Cialis for a patient with coronary artery disease, and/or failed to document such consideration.

F. Respondent provided medical care for Patient F, a 37 year old female, at Respondent's Office, at various times from on or about November 10, 2000, to on or about

August 31, 2012. Patient F initially presented with a history of depression. Respondent's care and treatment of Patient F failed to meet accepted standards of medical practice in that:

1. Respondent, throughout his treatment of Patient F, failed to conduct an adequate history and physical assessment of Patient F, and/or failed to document such history and assessment.
2. Respondent, on multiple occasions during his treatment of Patient F, improperly Prescribed Patient F Provigil.
3. Respondent, from on or about October 5, 2010, to on or about August 12, 2011, improperly treated Patient F's diabetes.
4. Respondent, from on or about April 10, 2008, to on or about August 12, 2011, improperly treated Patient F's hyperlipidemia.
5. Respondent, from on or about September 1, 2010, to on or about October 29, 2010, improperly treated Patient F's hypothyroidism.
6. Respondent, on multiple occasions during his treatment of Patient F, improperly prescribed Patient F Lortab, Darvocet and Nucynta.

G. Respondent provided medical care for Patient G, a 24 year old female, at Respondent's Office, at various times from on or about August 15, 2003, to on or about November 13, 2012. Patient G had a history of back pain. Respondent's care and treatment of Patient G failed to meet accepted standards of medical practice in that:

1. Respondent, in Respondent's Office on or about June 1, 2011, subjected Patient G to sexual contact.
2. Respondent, in Respondent's Office on or about September 14, 2011, subjected Patient G to sexual contact.

H. Respondent provided medical care for Patient H, a 15 year old female, at Respondent's Office, at various times from on or about April 8, 1996, to on or about August 13, 2012. Patient H initially presented for a routine examination. Respondent's care and treatment of Patient H failed to meet accepted standards of medical practice in that:

1. Respondent, in Respondent's Office on or about July 11, 2011, subjected Patient H to sexual contact.
2. Respondent, in Respondent's Office on or about November 4, 2011, subjected Patient H to sexual contact.

I. Respondent provided medical care to Patient I, a 24 year old female, at Respondent's Office, at various times from on or about June 2, 2008, to on or about January 19, 2009. Patient I reported back pain. Respondent's care and treatment of Patient I failed to meet the accepted standards of medical practice in that:

1. Respondent, in Respondent's Office on or about January 19, 2009, subjected Patient I to sexual contact.

SPECIFICATIONS

FIRST THROUGH SIXTH SPECIFICATIONS

WILLFUL HARASSMENT OF A PATIENT

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(31) physically harassing a patient, as alleged in the facts of the following:

1. The facts in paragraphs A and A.1.
2. The facts in paragraphs B and B.4.
3. The facts in paragraphs C and C.1 and/or C and C.4.
4. The facts in paragraphs G and G.1 and/or G and G.2.
5. The facts in paragraphs H and H.1 and/or H and H.2.
6. The facts in paragraphs I and I.1.

SEVENTH THROUGH TWELTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(20) by evidencing the moral unfitness to practice of medicine, as alleged in the facts of the following:

7. The facts in paragraphs A and A.1, and/or A and A.6.
8. The facts in paragraphs B and B.4.
9. The facts in paragraphs C and C.1 and/or C and C.4.
10. The facts in paragraphs G and G.1 and/or G and G.2.
11. The facts in paragraphs H and H.1 and/or H and H.2.
12. The facts in paragraphs I and I.1.

THIRTEENTH SPECIFICATION

FRAUD

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(2) by practicing the profession fraudulently, as alleged in the facts of the following:

13. The facts in paragraphs A and A.6.

FOURTEENTH THROUGH TWENTY FIRST SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(4) by practicing the profession with gross negligence on a particular occasion as alleged in the facts of the following:

14. The facts in paragraphs A and A.1, and/or A and A.7.
15. The facts in paragraphs B and B.1 and/or B and B.4.
16. The facts in paragraphs C and C.1 and/or C and C.4.
17. The facts in paragraphs E and E.2, and/or E and E.3.
18. The facts in paragraphs F and F.3, F and F.4, F and F.5, and/or F and F.6.
19. The facts in paragraphs G and G.1 and/or G and G.2.
20. The facts in paragraphs H and H.1 and/or H and H.2.
21. The facts in paragraphs I and I.1.

TWENTY SECOND THROUGH TWENTY NINTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(6) by practicing the profession with gross incompetence on a particular occasion as alleged in the facts of the following:

22. The facts in paragraphs A and A.1, and/or A and A.7.
23. The facts in paragraphs B and B.1 and/or B and B.4.
24. The facts in paragraphs C and C.1 and/or C and C.4.
25. The facts in paragraphs E and E.2, and/or E and E.3.
26. The facts in paragraphs F and F.3, F and F.4, F and F.5, and/or F and F.6.
27. The facts in paragraphs G and G.1 and/or G and G.2.
28. The facts in paragraphs H and H.1 and/or H and H.2.
29. The facts in paragraphs I and I.1.

THIRTIETH SPECIFICATION

NEGLECT ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(3) by practicing the profession with negligence on more than one occasion as alleged in the facts of any two or more of the following:

30. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, B and B.1, B and B.2, B and B.3, B and B.4, C and C.1, C and C.2, C and C.3, C and C.4, D and D.1, D and D.2, E and E.1, E and E.2, E and E.3, E and E.4, F and F.1, F and F.2, F and F.3, F and F.4, F and F.5, F and F.6, G and G.1, G and G.2, H and H.1, H and H.2 and/or I and I.1.

THIRTY FIRST SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(5) by practicing the profession with incompetence on more than one occasion as alleged in the facts of any two or more of the following:

31. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, B and B.1, B and B.2, B and B.3, B and B.4, C and C.1, C and C.2, C and C.3, C and C.4, D and D.1, D and D.2, E and E.1, E and E.2, E and E.3, E and E.4, F and F.1, F and F.2, F and F.3, F and F.4, F and F.5, F and F.6, G and G.1, G and G.2, H and H.1, H and H.2, and/or I and I.1.

THIRTY SECOND THROUGH THIRTY SIXTH SPECIFICATIONS

FAILURE TO MAINTAIN A RECORD

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient as alleged in the facts of the following:

32. The facts in paragraphs A and A.2, A and A.3, A and A.6, A and A.7, and/or A and A.8.
33. The facts in paragraphs C and C.2.
34. The facts in paragraphs D and D.2.
35. The facts in paragraphs E and E.1 and/or E and E.4.
36. The facts in paragraphs F and F.1.

DATED: July 18, 2014
Albany, New York

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

EXHIBIT "B"

Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact person who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within 15 days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender Licensee's DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment for up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges

of which the Licensee is found guilty, and may include revocation of a suspended license.