



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

October 21, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237-0032

Jahanshah Kayvanfar, M.D.
Olympic Orthopedic & Sports Medicine Group
40005 10th West #213
Palmdale, California 93551

Jahanshah Kayvanfar, M.D.


RE: In the Matter of Jahanshah Kayvanfar, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-344) 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 (l), (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:

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,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

**IN THE MATTER
OF
JAHANSHAH KAYVANFAR, M.D.**

**DETERMINATION
AND
ORDER**

BPMC #16-344

COPY

A hearing was held on August 17, 2016, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated June 27, 2016, were served upon the Respondent, **Jahanshah Kayvanfar, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Peter B. Kane, M.D.**, Chair, **Randolph H. Manning, Ph.D.** and **Ronald Uva, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **Richard J. Zahnleuter, Esq.**, General Counsel, by **Marc S. Nash, Esq.**, of Counsel. The Respondent, **Jahanshah Kayvanfar, M.D.**, did appear by telephone, from California. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10) (p). The statute provides for an expedited hearing when a licensee is charged solely 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 the instant case, the Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) - by having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, 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. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Jahanshah Kayvanfar, M.D., by phone.

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." 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. **Jahanshah Kayvanfar, M.D., the Respondent, did appear at the hearing by telephone and was served and notified of the hearing by personal service on July 15, 2016. (Petitioner's Exhibit 2)**
2. **Jahanshah Kayvanfar, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 9, 1980, by the issuance of license number 142045 by the New York State Education Department. (Petitioner's Ex. 3)**
3. **On or about October 22, 2014, the Medical Board of California (hereinafter, "California Board") by a Decision and Order which incorporated a Stipulated Settlement and Disciplinary Order dated August 5, 2014, revoked Respondent's Physician and Surgeon's license. (Petitioner's Ex. 4)**

4. The above revocation was stayed and Respondent was placed on three years' probation with terms that Respondent had to complete courses in deficient practice or knowledge and medical record keeping. The Respondent was prohibited from practicing outside of orthopedic surgery. Respondent's practice was to be monitored, and Respondent was prohibited to supervise physician assistants. (Petitioner's Ex., 4, p. 4)

5. The above actions were based upon findings, which could be proven if a hearing was held, that Respondent was negligent in his care and treatment of four patients and that Respondent failed to maintain adequate and accurate records relating to the provision of services during the treatment of four patients during 2010 and 2011. (Petitioner's Ex. 4, pp. 1-28)

6. The conduct resulting in the California 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:

a.) New York Education Law § 6630(3) (Practicing the profession with negligence on more than one occasion); and/or

b.) New York Education Law § 6530(32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient provided).

SPECIFICATION OF CHARGES

DISCIPLINARY ACTION IN ANOTHER STATE

"Respondent violated New York Education Law § 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where

the conduct upon which the finding was based would, it committed in New York state, constitute professional misconduct under the laws of New York state”

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, by telephone. He was sworn in by a California Notary, Janet Atlas, California license # 2099618. (T. 4-7) There was no dispute about jurisdiction.

On review of the entire record in this matter, it appears that there is no dispute about the fact of the underlying California discipline. The record shows that the Medical Board of California revoked Respondent's Physician and Surgeon's license and that this revocation was stayed. The record goes on to show that Respondent was placed on three years' probation with terms that Respondent had to complete courses in deficient practice or knowledge and medical record keeping. Doctor Kayvanfar was prohibited by this consent order from practicing outside of orthopedic surgery. Respondent's practice was to be monitored, and he was prohibited to supervise physician assistants. The Department's attorney pointed out that this discipline was based upon findings which could be proven if a hearing was held. It would have been established that the Respondent was negligent in his care and treatment of patients and that he failed to maintain adequate and accurate records relating to the provision of services during the treatment of four patients during 2010 and 2011.

The Department's attorney went on to explain that the conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State pursuant to several sections of New York State Education Law, including the provisions for practicing the profession with negligence on more than one occasion and failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient in question.

The record in this case goes on to show that the Respondent did sign the Consent Order on August 4, 2014 and that he did so on advice of counsel, Peter R. Osinoff, Esq. (Ex. 4 p. 12) At the present hearing, the Respondent attempted to re-litigate this matter, claiming that he signed this Order for "economic reasons," asserting that if he went to trial it would cost him another \$100,000 in attorney's fees. (T. 10) The Respondent apparently wished to avoid continued litigation in California and so he signed the Consent Order.

This attempt at re-litigation was denied by the Administrative Law Judge. It was explained to the Respondent that he would have to do this in a California court and that New York is obliged to give full faith and credit to the actions of a sister state. It was also explained to the Respondent that, should he prevail on such appeal, whatever action the New York board took in the instant case could be annulled with notice to OPMC.

On review of the entire matter, it appears that there is no dispute about the fact of the underlying disciplinary action. The record shows that the State Board of Medical Examiners for California revoked Respondent's Physician and Surgeon's license and that this revocation was stayed. This was done by a Consent Order which the Respondent

signed. The record goes on to show that Respondent was placed on three years' probation with terms that Respondent had to complete courses in deficient practice or knowledge and medical record keeping.

The panel agreed with the penalty imposed by California and ruled, unanimously, that a similar penalty should be imposed here in New York. The panel determined, unanimously, that the Respondent must complete all the requirements set forth in the California Order and fully satisfy the California Medical Board and be fully reinstated by that State before New York will consider lifting this indefinite suspension. After considering all the options available, the panel was unanimous in sustaining the charges and agreed, again unanimously, on this suspension.

The panel concluded that the people of New York would be protected by a suspension of Respondent's license in New York until the California Order is satisfied and he is returned to full practice in that State. If and when the California probation is satisfied and all its restrictions are removed, the Respondent may then petition for a lifting of this New York suspension.


ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are SUSTAINED.

2. The Respondent's license to practice medicine in the State of New York is **SUSPENDED** for at least three years and until such time as the conditions imposed on his license by the State of California are satisfied and removed.
3. After three years, and upon the removal of the terms and conditions on his California license, the Respondent may petition the New York State Board for the removal of this suspension from his license.
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10) (h).

DATED: Cazenovia, New York
September ~~2016~~
October 18, 2016



Peter B. Kane, M.D., Chair
Randolph H. Manning, Ph.D.
Ronald Uva, M.D.,

To:

**Jahanshah Kayvanfar, M.D.
Olympic Orthopedic & Sports Medicine Group
40005 10th West #213
Palmdale, CA 93551**

Jahanshah Kayvanfar, M.D.



**Marc S. Nash, Esq.
Attorney for Petitioner
Senior Attorney
NYS Department of Health
Bureau of Professional Medical Conduct
Coming Tower, Room 2512
Empire State Plaza
Albany, New York 12237**

APPENDIX I

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

IN THE MATTER
OF
JAHANSHAH KAYVANFAR, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Jahanshah Kayvanfar, M.D.
Olympic Orthopedic & Sports Medicine Group
40005 10th West #213
Palmdale, CA 93551

Jahanshah Kayvanfar, 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 August 17, 2016, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

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 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

¹ For GPS purposes, enter "Menands", not "Albany".



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. Should the parties have objection to proposed witnesses or documentary evidence, the party raising the objection shall contact the Bureau of Adjudication to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

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 not later than 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. 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 copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 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
June 27, 2016



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Marc Nash
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER

OF

JAHANSHAH KAYVANFAR, M.D.

STATEMENT
OF
CHARGES

JAHANSHAH KAYVANFAR, the Respondent, was authorized to practice medicine in New York State on or about May 9, 1980, by the issuance of license number 142045 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 22, 2014, the Medical Board of California (hereinafter, "California Board") by a Decision and Order which incorporated a Stipulated Settlement and Disciplinary Order Dated August 5, 2014, revoked Respondent's Physician and Surgeon's license. However, the revocation was stayed and Respondent was placed on three years' probation with terms that Respondent had to complete courses in deficient practice or knowledge and medical record keeping. Respondent is prohibited from practicing outside of orthopedic surgery. Respondent's practice will be monitored, and Respondent was and will be prohibited to supervise physician assistants. These actions were based upon findings, which could be proven if a hearing was held, that Respondent was negligent in his care and treatment and Respondent failed to maintain adequate and accurate records relating to the provision of services during the treatment of four patients during 2010 and 2011.

B. The Conduct resulting in the California 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(3) (Practicing the profession with negligence on more than one occasion); and/or
2. New York Education Law § 6530(32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, provided).

SPECIFICATION OF CHARGES

DISCIPLINARY ACTION IN ANOTHER STATE

Respondent violated New York State Education Law § 6530(9)(d) by having disciplinary action taken, where the conduct resulting in the disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State Law, in that Petitioner charges:

1. The facts in Paragraphs A and B and B1 and/or A and B and B2.

DATE: June 27, 2016
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct