

**PUBLIC**

**NEW YORK**  
*state department of*  
**HEALTH**

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

Sue Kelly  
Executive Deputy Commissioner

May 22, 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Dipak Desai, M.D.  
#1111170  
Northern Nevada Correctional Center  
1721 Snyder Avenue  
Carson City, Nevada 89701

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

Kim Irene Mandelbaum, Esq.  
Mandelbaum, Schwarz & Ellerton  
2012 Hamilton Lane  
Las Vegas, Nevada 89106

**RE: In the Matter of Dipak Desai, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 14-132) 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. 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 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,

REDACTED SIGNATURE

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

COPY

IN THE MATTER

OF

DIPAK DESAI, M.D.  
CO-08-05-3262-A

DETERMINATION

AND

ORDER

BPMC #14-132

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 February 19, 2014 and Statement of Charges dated December 24, 2013, were served upon the Respondent, Dipak Desai, 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 did not appear and was not represented by 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).

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

#### WITNESSES

For the Petitioner: None

For the Respondent: None

#### 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. Dipak Desai, M.D. the Respondent did not appear although he was duly served.  
(Petitioner's Exs. 2 and 2A)

2. Dipak Desai, M.D., the Respondent, was authorized to practice medicine in New York State on September 17, 1976 by the issuance of license number 128359 by the New York State Education Department. (Petitioner's Ex. 3)

3. On or about October 24, 2013, Respondent was convicted in Nevada District Court, Clark County, after a jury trial, of one count of murder in the Second Degree, a felony, nine counts of Insurance Fraud, a felony, seven counts of Performance of an Act in Reckless Disregard of Persons or Property Resulting in Substantial Bodily Harm, a felony, seven counts of Criminal Neglect of Patients Resulting in Substantial Bodily Harm, a felony, one count of Theft, a misdemeanor and two counts of Obtaining Money Under False Pretenses, a misdemeanor. Respondent was sentenced to life in prison with a minimum parole eligibility of one hundred twenty (120) months. (Petitioner's Ex.4)

#### **VOTE OF THE HEARING COMMITTEE**

##### **SPECIFICATION OF MISCONDUCT**

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

VOTE: Sustained (3-0)

#### **HEARING COMMITTEE DETERMINATION**

The Respondent did not appear at the hearing and offered nothing in the way of mitigation. Respondent was convicted of multiple egregious crimes that included murder, criminal neglect of several patients resulting in substantial bodily

harm and insurance fraud. The Hearing Committee finds that Respondent's actions are reprehensible and that he should never be allowed to practice medicine in New York State.

As a result, the Hearing Committee concludes that Respondent's license to practice medicine in New York State should be revoked. 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 specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State is **REVOKED**;
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 16, 2014  
J

SIGNATURE REDACTED

Virginia R. Marty  
Chairperson

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

TO:

Dipak Desai, M.D. #1111170  
Northern Nevada Correctional Center  
1721 Snyder Avenue  
Carson City, NV 89701

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

Kim Irene Mandelbaum, Esq.  
Mandelbaum, Schwarz & Ellerton  
2012 Hamilton Lane  
Las Vegas, NV 89106

# APPENDIX I

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

EXHIBIT

1

IN THE MATTER

NOTICE OF

OF

REFERRAL

DIPAK DESAI, M.D.  
CO-08-05-3262-A

PROCEEDING

TO: Dipak Desai #1111170  
Northern Nevada Correctional Center  
1721 Snyder Avenue  
Carson City, NV 89701

**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 24<sup>th</sup> of April, 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

Feb. 19, 2014

**SIGNATURE REDACTED**

MICHAEL A. HISEK  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Jude B. Mulvey  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower - Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

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

IN THE MATTER  
OF  
DIPAK DESAI, M.D.

STATEMENT  
OF  
CHARGES

DIPAK DESAI, M.D., Respondent, was authorized to practice medicine in New York State on September 17, 1976, by the issuance of license number 128359 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 24, 2013, Respondent was convicted in Nevada District Court, Clark County, after a jury trial, of one count of murder in the Second Degree, a felony, nine counts of Insurance Fraud, a felony, seven counts of Performance of Act in Reckless Disregard of Persons or Property Resulting in Substantial Bodily Harm, a felony, seven counts of Criminal Neglect of Patients Resulting in Substantial Bodily Harm, a felony, one count of Theft, a misdemeanor and two counts of Obtaining Money Under False Pretenses, a misdemeanor. Respondent was sentenced, inter alia, to life in prison with a minimum parole eligibility of one hundred twenty (120) months.

SPECIFICATION OF MISCONDUCT

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

1. The facts in Paragraph A.

DATED: Dec. 24, 2013  
Albany, New York

SIGNATURE REDACTED

MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct