

Nirav R. Shah, M.D., M.P.H.  
Commissioner

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

Public

Sue Kelly  
Executive Deputy Commissioner

August 16, 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jude B. Mulvey, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

Foad Salehani, M.D.  
REDACTED

**RE: In the Matter of Foad Salehani, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 13-247) 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  
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

-----X  
IN THE MATTER : DETERMINATION  
OF :  
FOAD SALEHANI, M.D. : AND  
CO-12-07-3635-A : ORDER  
: BPMC#13-247  
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A Notice of Referral Proceeding and Statement of Charges, both dated May 1, 2013, were served upon the Respondent, Foad Salehani, M.D. AIRLIE A.C. CAMERON, M.D., M.P.H. (Chair), MARY E. RAPPAZZO, M.D., and GAIL S. HOMICK HERRLING, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Jude B. Mulvey, Esq., Associate Counsel. The Respondent failed to appear in person at the hearing but did submit various documents for the Hearing Committee's consideration. A hearing was held on July 24, 2013. Evidence was received and witnesses sworn and heard 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 where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(d) by having had his license to practice medicine revoked or having other disciplinary action taken by the duly authorized professional disciplinary agency in another state after disciplinary action was instituted by said other state. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

**FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses

refer to transcript page numbers or exhibits. These citations represent 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.

1. Foad Salehani, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on November 17, 1994 by the issuance of license number 197868 by the New York State Education Department. (Exhibit #3).

2. On or about May 29, 2012, the Medical Board of California, Department of Consumer Affairs (hereinafter "California Board") by Stipulated Settlement and Disciplinary Order ("California Order") revoked Respondent's license to practice medicine, stayed the revocation and placed Respondent on probation for five (5) years during which he is prohibited from supervising Physician Assistants, is required to complete continuing medical education courses in prescribing and record keeping practices, and complete a clinical training program. The California action was based on Respondent's commission of multiple acts of gross negligence, negligence on more than one occasion, incompetence on more than one occasion, and/or failure to maintain adequate and accurate medical records. (Exhibit #4).

3. On or about June 19, 2013, the California Board issued a Cease Practice Order against Respondent. The California Board found that Respondent had failed to successfully complete the

Physician Assessment and Clinical Education Program (PACE), as mandated by the original California Order. (Exhibit A).

**CONCLUSIONS OF LAW**

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence clearly established that the Respondent was disciplined by the California Board. The conduct found by the California Board, had it occurred within New York State, would constitute professional misconduct in violation of New York Education Law §6530(3) [practicing the profession with negligence on more than one occasion]; §6530(4) [gross negligence]; §6530(5) [practicing with incompetence on more than one occasion], as well as in violation of New York Education Law §6530(32) [failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient].

The Department has clearly sustained its burden of proof in this matter. Therefore, the First Specification of professional misconduct shall be sustained.

### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent's California medical license was revoked. The revocation was then stayed pursuant to a stipulated settlement. The terms of the settlement included a requirement that he successfully complete the Physician Assessment and Clinical Education program offered at the University of California - San Diego School of Medicine. He was required to enroll in the program within sixty days of the effective date of the California Order. One year later, the California Board ordered Respondent to cease his medical practice for failing to comply with this requirement. He supplied correspondence to this Board which purported to demonstrate his actual compliance. (Exhibit A). Unfortunately, it does nothing of the sort. It contains various contradictory statements that he either completed the program on May 14 to 17, 2013, or has enrolled to attend the program on July

16 and 17, 2013. Even if either of these statements was true, he would still have violated the terms and conditions of the California Order. Lastly, Respondent submitted a letter, dated July 12, 2013 from a case manager at the PACE program. This letter indicates that Respondent is scheduled to attend phase I of the PACE assessment commencing on August 8-9, 2013.

It is clear that Respondent has failed to fulfill the requirements of the California Order. The California Board was sufficiently concerned about his non-compliance that it summarily ordered Respondent to cease practice. Respondent did not appear at the hearing, so that we were unable to ascertain exactly the status of his compliance with the terms and conditions imposed upon him by the California Board. Given the serious nature of the deficiencies in Respondent's medical practice outlined by the California Board, as well as the Respondent's apparent inability to comply with the requirements imposed upon him, the Hearing Committee unanimously determined that revocation is the only appropriate sanction to impose upon Respondent.

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ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is SUSTAINED;

2. Respondent's license to practice medicine in New York State shall be, and hereby is REVOKED.

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Tupper Lake, New York

August 14, 2013

REDACTED

AIRLIE A.C. CAMERON, M.D., M.P.H. (CHAIR)

MARY E. RAPPAZZO, M.D.

GAIL HOMICK HERRLING

TO: Jude B. Mulvey, Esq.  
Associate Counsel  
New York State Department of Health  
Corning Tower, Room 2512  
Albany, New York 12237

Foad Salehani, M.D.

REDACTED

APPENDIX I

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

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IN THE MATTER  
OF  
FOAD SALEHANI, M.D.  
CO-12-07-3635-A

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STATEMENT  
OF  
CHARGES

FOAD SALEHANI, M.D., Respondent, was authorized to practice medicine in New York state on November 17, 1994, by the issuance of license number 197868 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 29, 2012, the Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by Stipulated Settlement and Disciplinary Order (hereinafter "California Order") revoked Respondent's license to practice medicine, stayed the revocation and placed Respondent on probation for five (5) years during which he is prohibited from supervising Physician Assistants, is required to complete Continuing Medical Education courses in prescribing and record keeping practices, and complete a clinical training program. The California discipline was based on Respondent's commission of multiple acts of gross negligence, negligence on more than one occasion, incompetence on more than one occasion, and/or failure to maintain adequate and accurate medical records.

B. The conduct resulting in the California Board 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) (negligence on more than one occasion)
2. New York Education Law §6530 (4) (gross negligence)
3. New York Education Law §6530 (5) (practicing with incompetence on more than one occasion)
4. New York Education Law §6530 (32) (failure to maintain adequate records)

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

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

2. The facts in Paragraphs A and/or B.

DATED: *May 1*, 2013  
Albany, New York

REDACTED  

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