



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
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NYS Department of Health*

Dennis P. Whalen
*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

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Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

April 11, 2006

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Subhajit Datta, M.D.
7 Bywater Drive
Getzville, NY 14068

Re: License No. 205639

Dear Dr. Datta:

Enclosed is a copy of Order #BPMC 06-77 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect April 18, 2006.

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 the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Kevin Ricotta, Esq.
1100 Main Place Tower
350 Main Street
Buffalo, NY 14202

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

IN THE MATTER
OF
SUBHAJIT DATTA, M.D.

CONSENT
ORDER

BPMC No. 06-77

Upon the application of SUBHAJIT DATTA, M.D. (Respondent) , in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

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

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 4-10-2006


KENDRICK A. SEARS, M.D.
Chair
State Board for Professional Medical Conduct

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

**IN THE MATTER
OF
SUBJAHIT DATTA, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

SUBJAHIT DATTA, M.D. , M.D., representing that all of the following statements are true, deposes and says:

That on or about January 21, 1997, I was licensed to practice as a physician in the State of New York, and issued License No. 205639 by the New York State Education Department.

My current address is 462 Grider Street, Buffalo, New York, 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 has charged me with Two Specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the first specification in full satisfaction of the charges against me, and agree to the following penalty:

a censure and reprimand; and
a limitation on my license prohibiting me from performing any elective esophageal surgery, which limitation shall continue until:
1) I undergo additional education and training concerning esophageal surgery pre-approved in writing by the

Director of the Office of Professional Medical Conduct (OPMC); and
2) an order lifting the limitation is issued.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain active registration of Respondent's license with the New York State Education Department, Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall

constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement 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 adopts this Consent Agreement, the Chair of the Board shall issue a Consent 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 Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 230 and 230-a and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite

powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, 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 Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATE: 3/10/06



SUBJAHIT DATTA, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 3/9/06



KEVIN A. RICOTTA
Attorney for Respondent

DATE: 3/21/06 KPD
~~3/10/06~~



KEVIN P. DONOVAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 4/10/06



DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT A

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

-----X
IN THE MATTER : STATEMENT
OF : OF
SUBHAJIT DATTA, M.D. : CHARGES
-----X

SUBHAJIT DATTA, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 1, 1997, by the issuance of license number 1205639 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A (for reasons of confidentiality, identified only in the attached Appendix), a 51 year old male, from around August 2000 until around March 2001, at his office, 462 Grider Street, Buffalo, New York, and at Sisters Hospital, Buffalo, New York. Respondent's care of Patient A did not meet acceptable standards of care in that:

1. On September 20, 2000, Respondent incorrectly chose to perform a segmental esophagectomy on Patient A.
2. Having chosen the incorrect procedure, Respondent performed the segmental esophagectomy incorrectly.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession with negligence on more than one occasion within the meaning of New York Education Law § 6530(3) in that Petitioner charges:

1. The facts of paragraphs A and A.1 and A and A.2.

SECOND SPECIFICATION

PRACTICING WITH GROSS NEGLIGENCE

The Respondent is charged with practicing the profession with gross negligence on a particular occasion within the meaning of New York Education Law § 6530(4) in that Petitioner charges:

2. The facts of paragraphs A and A.1 and/or A and A.2.

Dated: March 28, 2006

Albany, New York


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