



# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

September 15, 2022

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Horacio Gonzalez, MD

Nathaniel White, Esq,  
NYS Department of Health  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237

**RE: In the Matter of Horacio Gonzalez, M.D**

Dear Parties:

Enclosed please find the Determination and Order (No. 22-201) 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. 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:

Jean T. Carney, 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 Ms. Carney 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,

A large black rectangular redaction box covers the signature of the sender.

Séan D. O'Brien  
Acting Chief Administrative Law Judge  
Bureau of Adjudication

SDO: nm  
Enclosure

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

COPY

-----X  
IN THE MATTER  
OF  
HORACIO GONZALEZ, MD

:  
: DETERMINATION  
:  
: AND  
:  
: ORDER

-----X  
BPMC-22-201

A Notice of Referral Proceeding and Statement of Charges dated July 26, 2022 were duly served upon Horacio Gonzalez, MD (Respondent). (Exhibits 1, 2.) A hearing was held on September 8, 2022 via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **JONATHAN ECKER, MD**, Chairperson, **CHRISTOPHER L. HAMILL, MD**, and **RUTH HOROWITZ, PhD**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **NATALIE BORDEAUX, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by Nathaniel White, Associate Counsel. The Respondent did not appear for the hearing. The hearing proceeded in his absence. The Hearing Committee received and examined documents from the Department (Exhibits 1-5). A transcript of this proceeding was made.

After considering the entire hearing record, the Hearing Committee hereby issues this Determination and Order. All findings, conclusions, and determinations are unanimous.

**JURISDICTION**

The Respondent is charged with professional misconduct pursuant to New York Education Law (Educ. Law) § 6530(9)(d) and § 6530(9)(a)(iii). A licensee charged solely with a violation of Educ. Law § 6530(9) is entitled to a hearing, the scope of which is limited to whether there is a relevant conviction or administrative determination and if so, the nature and severity of the penalty

to be imposed. PHL § 230(10)(p). Hearing procedures are set forth in Department regulations at 10 NYCRR Part 51. The Department has the burden of proving its case by a preponderance of the evidence. PHL § 230(10)(f).

### FINDINGS OF FACT

1. On July 23, 1984, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 159262. (Exhibit 3.)
2. On February 7, 2018, the Respondent presented a prescription to a pharmacy for Valium with his name on it. After the pharmacist refused to fill the prescription because the Respondent had prescribed it to himself, he changed the patient's name on the prescription to his cat, Duke, and the prescription was filled. (Exhibits 4, 5.)
3. On February 5, 2021, the Respondent was arrested based upon his actions on February 7, 2018. (Exhibit 5.)
4. On February 12 through 19, 2021, the Florida Department of Health conducted an internal investigation regarding the basis for the Respondent's arrest, and ultimately alleged that the Respondent's actions violated multiple Florida laws, including: Florida Statute § 456.072(1)(z), being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or as a result of any mental or physical condition; Florida Statute § 458.331(1)(q), prescribing a controlled substance other than in the course of the physician's professional practice; and Florida Statute § 458.331(r), prescribing of a controlled substance by the physician to himself. (Exhibit 4.)
5. On June 2, 2021, in the Circuit Court of the 18<sup>th</sup> Judicial Circuit, Seminole County, Florida, the Respondent entered a plea of nolo contendere (no contest) to a charge of unlawful possession of a controlled substance in violation of Florida Statute § 893.13(6)(a), a third-degree

felony. The court accepted his plea and withheld adjudication of his guilt. The Respondent was sentenced to 18 months of probation, during which he was required to perform 50 hours of community service and undergo a drug and alcohol evaluation. The Respondent agreed to permanently forfeit his medical license and was permanently barred from practicing medicine in the State of Florida. He was also required to pay court costs and fines totaling \$468. (Exhibit 5.)

6. On June 15, 2021, the Respondent executed an offer to voluntarily relinquish his Florida license to practice medicine, to never reapply for licensure as a physician in the State of Florida, and to waive his right to a determination of probable cause on the allegations that his actions violated Florida laws governing the practice of medicine. (Exhibit 4.)

7. By final order dated October 21, 2021, the Florida Board of Medicine (Florida Board) accepted the Respondent's June 15, 2021 offer to voluntarily relinquish his license to practice medicine in Florida. Pursuant to the order, the Respondent's voluntary relinquishment of his license constituted discipline upon his license. (Exhibit 4.)

### **DISCUSSION**

Although the Respondent was duly served by personal service with notice of the hearing and the charges, he failed to respond or appear at the hearing to present any evidence to contest the charges. The Department having established jurisdiction and proper notice, the ALJ determined that the hearing could proceed on the merits despite the Respondent's absence.

The Department charged the Respondent with two specifications of charges of professional misconduct under Educ. Law § 6530. The Hearing Committee sustained both specifications.

First Specification: Educ. Law § 6530(9)(d) - having voluntarily or otherwise surrendered his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the surrender of the

license would, if committed in New York, constitute professional misconduct under the laws of New York.

By final order dated October 21, 2021, the Respondent voluntarily relinquished his license to practice medicine in the state of Florida and to never reapply for licensure in Florida. The order explicitly stated that the Respondent's voluntary relinquishment constituted discipline upon his license. (Exhibit 4.)

The Department's July 26, 2022 Statement of Charges alleges that the Respondent's misconduct in Florida described in the October 21, 2021 final order would, if committed in New York, constitute professional misconduct as defined in: (1) Educ. Law § 6530(2), practicing the profession fraudulently (factual allegation B.1); (2) Educ. Law § 6530(8), being a habitual user of alcohol, or being dependent upon or a habitual user of narcotics, or having a psychiatric condition which impairs the licensee's ability to practice (factual allegation B.2); and (3) Educ. Law § 6530(16), a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine (factual allegation B.3). (Exhibit 1.)

The Hearing Committee was not convinced that the Respondent's conduct that led to the Florida Board's disciplinary action would, if committed in New York, constitute professional misconduct under Educ. Law § 6530(8). No evidence was presented to show that the Respondent was either dependent upon or a habitual user of narcotics or that he has a psychiatric condition which impairs his ability to practice medicine. Although the Florida Department of Health investigator suggested that the Respondent "maybe [sic] impaired," the Hearing Committee was unable to render a conclusion as to the Respondent's psychiatric state or the extent of his use of narcotics.

The Hearing Committee agreed that the Respondent's conduct that led to the Florida Board's disciplinary action would, if committed in New York, constitute professional misconduct under Educ. Law § 6530(2). The intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine and with the intent to deceive, constitutes the fraudulent practice of medicine. *Choudhry v. Sobol*, 566 N.Y.S.2d 723 (App. Div. 1991.). After a pharmacist refused to dispense Valium to the Respondent because he had prescribed the controlled substance for himself, the Respondent changed the patient's name to "Duke", the name of his cat, in order to obtain the Valium. From these actions, the Hearing Committee found that the Respondent (1) made a false representation; (2) knew the representation was false; and (3) intended to mislead through the false representation. *Sherman v. Board of Regents*, 225 N.E.2d 559 (1967).

The Hearing Committee also found that the Respondent's fraudulent procurement of Valium for himself by identifying the patient on the prescription as "Duke" would, if committed in New York, constitute professional misconduct under Educ. Law § 6530(16), a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine. Specifically, his actions, if committed in New York, would have violated the following New York laws: Penal Law §§ 178.26(1)(a)-(b) and PHL §§ 3397(1)(a)-(b) obtaining a controlled substance by fraud, by the concealment of a material fact, or by the use of a false name and making a false statement in any prescription; Penal Law § 178.26(1)(d) and PHL § 3397(1)(d), making a false prescription; and Penal Law § 220.03, criminal possession of a controlled substance in the seventh degree. The Hearing Committee thus determined to sustain this charge.

Second Specification: Educ. Law § 6530(9)(a)(iii) - having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law.

The Respondent was convicted in the Circuit Court of the 18<sup>th</sup> Judicial Circuit of Seminole County, Florida of unlawful possession of a controlled substance in violation of Florida Statute § 893.13(6)(a), which states, in pertinent part:

A person may not be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized...

The Hearing Committee agreed that the Respondent's actions, if committed in New York, would constitute a crime under New York Penal Law § 220.03, criminal possession of a controlled substance in the seventh degree. The Hearing Committee therefore determined that the Respondent violated Educ. Law § 6530(9)(a)(iii) and sustained this charge.

The Hearing Committee agreed with the Department's recommendation that the Respondent's license should be revoked. The Florida Board order and the Respondent's criminal conviction both stemmed from the Respondent's inappropriate use of his medical license. The Respondent elected not to attend this hearing, despite multiple attempts to notify him of the hearing and his ability to respond to the charges, and despite the convenience that participation by videoconferencing affords. The Hearing Committee was given no information to show that the Respondent will avoid engaging in similar unlawful behavior in the future. In furtherance of its responsibility to protect patients in the State of New York, the Hearing Committee concluded that revocation of the Respondent's medical license was the only appropriate penalty.




ORDER

**IT IS HEREBY ORDERED THAT:**

1. The first and second 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 revoked. PHL § 230-a(4).
3. This Order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

DATED: 9/13, 2022

De Witt, New York

  
Jonathan Ecker, MD  
Chairperson

Christopher L. Hamill, MD  
Ruth Horowitz, PhD

To: Horacio Gonzalez, MD



Nathanial White, Associate Counsel  
Bureau of Professional Medical Conduct  
Division of Legal Affairs  
New York State Department of Health  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237

IN THE MATTER

OF

HORACIO GONZALEZ, M.D.

STATEMENT  
OF  
CHARGES

HORACIO GONZALEZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 23, 1984 by the issuance of license number 159262 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about October 22, 2021, the Florida Board of Medicine ("Florida Board") issued a Final Order in which the Florida Board accepted Respondent's voluntarily relinquishment of his license to practice medicine in the State of Florida. As part of the voluntary relinquishment, Respondent agreed to never again apply for licensure in the State of Florida. The Final Order constituted disciplinary action against the Respondent. The Final Order followed an Investigative Report dated February 2021 that alleged that Respondent was arrested on February 5, 2021 for felony possession of controlled substances and for acquiring controlled substances by misrepresentation when he went to a pharmacy with a prescription for Valium for himself that the pharmacist refused to dispense. The Investigative Report also alleged that the Respondent then changed the name on the prescription to the name of his cat and presented it to the pharmacist who filled the prescription. The Investigative Report alleged that Respondent's conduct may have violated various provisions of Florida law including Fla. Stat. sections 456.072(1)(k), (z), (dd), 458.331(1)(g), (q), (r), (s), and (nn).

B. The conduct resulting in the Florida disciplinary action against the Respondent would constitute misconduct under the laws of New York State pursuant to the following sections of New York law:

1. New York Education Law section 6530(2) (practicing the profession fraudulently).
2. New York Education Law section 6530(8) (being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, or having a psychiatric condition which impairs the licensee's ability to practice).
3. New York Education Law section 6530(16) (a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine).

C. On or about June 2, 2021, in the Circuit Court of the 18<sup>th</sup> Judicial Circuit, Seminole County, Florida, the Respondent entered a plea of Nolo Contendere to one count of Possession of a Controlled Substance in violation of Florida Statute 893.13(6)(A), a third-degree felony. The Florida Circuit Court ordered that the adjudication of guilt be withheld and sentenced the Respondent to 18 months of probation with 50 hours of community service, a drug and alcohol evaluation, a condition that he permanently forfeit his Florida medical license, a condition that the Respondent is permanently barred from practicing medicine in the State of Florida, and a requirement that Respondent pay costs and fines totaling \$468.00.

D. The conduct resulting in the Florida conviction against the Respondent would constitute a crime under the laws of New York State pursuant to the following sections of New York law:

1. New York Penal Law sections 178.26(1)(a)(i), (ii), and/or (iii) (fraud and deceit related to controlled substances).
2. New York Penal Law section 178.26(1)(b) (fraud and deceit related to controlled substances).
3. New York Penal Law section 178.26(1)(d) (fraud and deceit related to controlled substances).

4. New York Penal Law section 220.03 (criminal possession of a controlled substance in the seventh degree).

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having the Respondent's license to practice medicine revoked, suspended or having other disciplinary action taken, or having the Respondent's application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered the Respondent's license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or 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 (namely N.Y. Educ. Law §§ 6530[2], [8], and/or [16]) as alleged in the facts of the following:

1. Paragraphs A, B and B.1, B.2, and/or B.3.

**SECOND SPECIFICATION**


**CRIMINAL CONVICTION (Other Jurisdiction)**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (namely N.Y. Penal Law §§

178.26(1)(a)(i), (ii), (iii), 178.26(1)(b), 178.26(1)(d), and/or 220.03) as alleged in the facts of the following:

2. Paragraphs C, D, and D.1, D.2, D.3, and/or D.4.

DATE: July 26, 2022  
Albany, New York

  
JEFFREY J. CONKLIN  
Acting Deputy Counsel  
Bureau of Professional Medical Conduct