



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

November 14, 2018

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Scott Gordon, D.O.  


James M. McGovern, Esq.  
604 E Rich Street  
Columbus, Ohio 43215

Anna R. Lewis  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Division of Legal Affairs  
90 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of Scott Gordon, D.O.**

Dear Parties:

Enclosed please find the Determination and Order (No. 18-256) 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:

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: cmg  
Enclosure

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

-----X	:	
IN THE MATTER	:	DETERMINATION
	:	
OF	:	AND
	:	
SCOTT GORDON, D.O.	:	ORDER
	:	18-256
-----X		

A hearing was held on October 24, 2018, at the offices of the New York State Department of Health (Department), 90 Church Street, New York, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **JILL M. RABIN, M.D.**, Chairperson, **ELISA J. WU, M.D.**, and **JACQUELINE H. GROGAN, Ed.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **NATALIE J. BORDEAUX, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by Anna R. Lewis, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges dated September 24, 2018 and an Amended Statement of Charges dated October 9, 2018, were duly served upon James M. McGovern, Esq., attorney for Scott Gordon, D.O. (Respondent). (Exhibits 1 and 2.) The Respondent submitted an Answer to the Amended Statement of Charges. (Exhibit A.) However, he did not appear at the hearing. (Exhibit I.) There were no witnesses. The Hearing Committee received and examined documents from the Department (Exhibits 1-3) and from the Respondent (Exhibits A-B.) A stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charge that the Respondent committed professional misconduct, in violation of Education Law (Educ. Law) § 6530(9)(b) and § 6530(9)(d), and that pursuant to PHL § 230-a, the penalty of revocation of the Respondent's medical license is appropriate.

## BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(b) by “[h]aving been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.” The Respondent is also charged with professional misconduct pursuant to Educ. Law § 6530(9)(d) for “[h]aving his license to practice medicine revoked... after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation would, if committed in New York state, constitute professional misconduct under the laws of New York state.” Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

## FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. On or about December 3, 2015, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 282438. (Exhibit 2.)
2. From October 29, 2014 through June 30, 2017, the Respondent was authorized by the State Medical Board of Ohio (Ohio Board) to practice osteopathic medicine and surgery in the State of Ohio through the issuance of a training certificate. The training certificate allowed him to complete a residency program at East Liverpool City Hospital (ELCH). (Exhibit 3.)

3. By letter dated February 1, 2017, the Ohio Board directed the Respondent to submit to a psychiatric evaluation on March 2, 2017 after receiving information which gave the Board reason to believe that the Respondent was unable to practice medicine due to mental or physical illness. The Board based its determination on the Respondent's appearance at his residency program at ELCH in a manic state on multiple occasions, which required inpatient psychiatric treatment, and the Respondent's abuse of various substances, including Phencyclidine (PCP) and amphetamines. He also received prescription stimulants from two different treating psychiatrists who were unaware of the other. (Exhibit 3.)

4. On February 17, 2017, the Respondent's attorney advised the Ohio Board that the Respondent was scheduled to undergo a psychiatric examination in Nebraska on February 28, 2017, and that the Respondent was unable to travel to Ohio for an examination. (Exhibit 3.)

5. On February 27, 2017, the Respondent's attorney contacted the Ohio Board to request that the psychiatric examination be rescheduled. The Ohio Board agreed to reschedule the Respondent's examination for March 15, 2017. (Exhibit 3.)

6. The Respondent did not attend the March 15, 2017 psychiatric evaluation and made no subsequent attempt to reschedule the examination. (Exhibit 3.)

7. In an Order dated December 13, 2017, the Ohio Board found that the Respondent committed professional misconduct by failing to appear for the Board-ordered psychiatric examination in violation of Ohio Revised Code § 4731.22(B)(19) and issued an order to revoke the Respondent's training certificate to practice osteopathic medicine and surgery. (Exhibit 3.)

## VOTE OF THE HEARING COMMITTEE

### FIRST SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(b).

VOTE: Sustained (3-0)

### SECOND SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

### CONCLUSIONS OF LAW

The Respondent failed to appear at the hearing even though he was duly served with a Notice of Referral Proceeding, Statement of Charges, and Amended Statement of Charges. After establishing jurisdiction in this matter, the ALJ determined that the hearing could proceed on the merits despite the Respondent's absence. The Department's evidence showed that the Ohio Board found the Respondent guilty of professional misconduct and determined to revoke the Respondent's training certificate to practice osteopathic medicine and surgery after he failed to submit to a required psychiatric examination. The Hearing Committee noted that the purpose of the evaluation was to assess the Respondent's mental status based on his psychiatric history. While the Ohio Board made efforts to accommodate the Respondent's and his attorney's requests to reschedule the examination, the Respondent never appeared and made no subsequent attempt to reschedule the examination.

The Hearing Committee considered the Respondent's Answer to the Amended Statement of Charges, and disagreed with his claim that the Ohio Board lacked jurisdiction to direct a psychiatric examination because the Respondent had completed his residency and was not practicing medicine

in Ohio. The evidence established that the Respondent's training certificate to practice medicine in Ohio was valid on the date of the Ohio Board's order, which involved the Respondent's conduct as a medical resident.

The Respondent also claimed that his failure to submit to a Board-ordered psychiatric examination in Ohio would not constitute misconduct in New York because New York regulations afford physicians an opportunity to be heard, represented by counsel, and participate in the selection of an examiner whereas the Ohio Board has the sole discretion to order physicians in Ohio to submit to medical or psychiatric examinations, with such examiners selected by the Ohio Board. The Hearing Committee rejected this assertion because the underlying conduct involved the Respondent's failure to comply with the Ohio Board's order to submit to a psychiatric evaluation, as opposed to the evaluation procedures. The Hearing Committee disregarded the Respondent's reference in his Answer to psychiatric findings from a psychiatrist in Nebraska because it did not obviate the Respondent's obligation to comply with the Ohio Board's directives. (Respondent Exhibit B.)

By having been found guilty of professional misconduct by the Ohio Board, a duly authorized professional disciplinary agency in Ohio, the Hearing Committee determined that the Respondent violated Educ. Law § 6530(9)(b). In addition, the Hearing Committee determined that the Respondent violated Educ. Law § 6530(9)(d) because the Ohio Board's determination to revoke the Respondent's training certificate to practice osteopathic medicine and surgery was based upon conduct (the Respondent's failure to undergo a psychiatric examination ordered by the Ohio Board) which, if committed in New York State, would constitute professional misconduct under the laws of New York state, specifically Educ. Law § 6530(15), "failure to comply with an order issued pursuant to subdivision seven, paragraph (a) of subdivision ten, and subdivision seventeen of section two hundred thirty of the public health law."

In consideration of the full spectrum of penalties under PHL 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, the Hearing Committee agreed with the Department's recommendation of revocation of the Respondent's medical license. They based their conclusion on the Respondent's evident disregard for the Ohio Board's directives. The Hearing Committee viewed the Respondent's declination to participate in the present proceeding as further evidence of the Respondent's lack of awareness of the gravity of the charges and the potential consequences.

For these reasons, the Hearing Committee concluded that the appropriate penalty in this case is revocation of the Respondent's New York medical license.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The specifications of professional misconduct, as set forth in the Amended Statement of Charges, are sustained;
2. The Respondent's license to practice medicine is REVOKED; and
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h).

DATED: New York, New York

November 9<sup>th</sup>, 2018

  
Jill M. Rabin, M.D.  
Chairperson

Elisa J. Wu, M.D.  
Jacqueline H. Grogan, Ed.D.



To: Scott Gordon, D.O.



James M. McGovern, Esq.  
604 E. Rich Street  
Columbus, Ohio 43215

Anna R. Lewis  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Division of Legal Affairs  
90 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007

# APPENDIX I

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

IN THE MATTER  
OF  
SCOTT GORDON, D.O.

AMENDED  
STATEMENT  
OF  
CHARGES

SCOTT GORDON, D.O., the Respondent, was authorized to practice osteopathic medicine in New York State on or about December 3, 2015, by the issuance of license number 282438 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about December 13, 2017, the State Medical Board of Ohio ("Board") issued an Order, and determined in its Conclusions of Law that Respondent's failure to appear for his Board-ordered psychiatric examination, constituted a violation of the Ohio Revised Code 4731.22(B)(19)(Failure to submit to a mental or physical examination).
1. Pursuant to this Order, Respondent's training certificate to practice osteopathic medicine and surgery was revoked.
  2. The conduct resulting in the Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York State Education Law § 6530(15)(Failure to comply with an order issued pursuant to subdivision seven, paragraph (a) of subdivision ten).

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(15)) as alleged in the facts of the following:

1. Paragraphs A. and A.1. and A.2.

**SECOND SPECIFICATION**

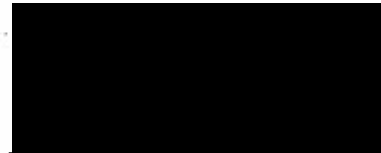
**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her 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(15)) as alleged in the facts of the following:

2. Paragraphs A. and A.1. and A.2.

DATE: October 9, 2018  
New York, New York



Henry Weintraub  
Chief Counsel  
Bureau of Professional Medical Conduct

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

IN THE MATTER  
OF  
SCOTT GORDON, D.O.

STATEMENT  
OF  
CHARGES

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- A. On or about December 13, 2017, the State Medical Board of Ohio ("Board") issued an Order, and determined in its Conclusions of Law that Respondent's failure to appear for his Board-ordered psychiatric examination, constituted a violation of the Ohio Revised Code 4731.22(B)(19)(Failure to submit to a mental or physical examination).
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  2. The conduct resulting in the Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York State Education Law § 6530(15)(Failure to comply with an order issued pursuant to subdivision seven, paragraph (a) of subdivision ten).

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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, 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(15)) as alleged in the facts of the following:

1. Paragraphs A. and A.1. and A.2.

DATE: September 24, 2018  
New York, New York



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Henry Weintraub  
Chief Counsel  
Bureau of Professional Medical Conduct