



**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

May 25, 2023

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

David Burns, M.D.


Re: License No. 175860

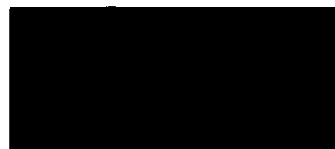
Dear Dr. Burns:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 23-113. This order and any penalty provided therein goes into effect May 25, 2023.

The Board Order checklist requires your review and compliance as it relates to your Order.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,



David Besser, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Jordan Fensterman, Esq.
Abrams & Fensterman, LLP.
3 Dakota Drive, Suite 300
Lake Success, New York 11042

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

BPMC No. 23-113

IN THE MATTER
OF
DAVID BURNS, MD

CONSENT
ORDER

Upon the application of (Respondent) David Burns, M.D. 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 Consent 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: 5/24/2023


THOMAS T. LEE, 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
DAVID BURNS, MD**

**CONSENT
AGREEMENT**

David Burns, M.D., represents that all of the following statements are true:

That on or about August 15, 1988, I was licensed to practice as a physician in the State of New York and issued License No. 175860 by the New York State Education Department.

My current address is [REDACTED], and

[REDACTED]
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 (Board) 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 Statement of Charges, in full satisfaction of the charges against me, and agree to the following penalty:

Immediately upon issuance of the Consent Order for which I apply, my license to practice medicine shall be limited, pursuant to N.Y. Pub. Health Law § 230-a, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition. I shall be precluded from further reliance upon my license to practice medicine to exempt me from the licensure, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated, or certified by the Board of Regents, Department of Education, Department of Health, or the Department of State.

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

• That Respondent shall comply with each, and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a; and

That Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC immediately upon having done so. Respondent's license shall remain inactive until such time as a Modification request has been granted; and

That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with

the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; 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; and

That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined in N.Y. Educ. 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 or other confidential information, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Order are authorized by N.Y. Pub. Health Law §§ 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.

I am aware and agree that, regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the Consent Agreement that I propose in this application, or to decline to do so.

DATE 05/15/2023


DAVID BURNS, M.D.
RESPONDENT


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

DATE: 5-22-23



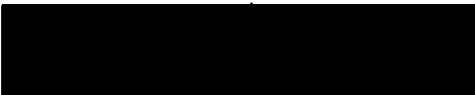
JORDAN FENSTERMAN, ESQ.
Attorney for Respondent

DATE: 5-23-23



LESLIE EISENBERG
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 5/24/2023



SHELLY WANG BANDAGO
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
DAVID BURNS, M.D.

STATEMENT
OF
CHARGES

David Burns, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 15, 1988, by the issuance of license number 175860 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A, who had a history of malignant neoplastic disease, anxiety disorder, and chronic pain, from in or about March 2011 through in or about May 2016. Respondent prescribed Xanax, Fentanyl, Adderall, Belsomra, and Omeprazole for Patient A. Respondent engaged in a personal and sexual relationship with Patient A, who died in 2018. (Patient names are listed in the Appendix.) Respondents care and treatment deviated from minimally accepted standards of care in that he:

1. Engaged in a personal and sexual relationship with the patient.
2. Failed to:
 - a. appropriately evaluate the patient including but not limited to performing and noting adequate histories and appropriate physical examinations,

b. appropriately monitor the patient's use of narcotics by checking I-Stop, and

c. maintain an accurate record that reflects the care and treatment rendered to the patient.

3. Inappropriately:

a. prescribed medications/controlled substances and/or modified dosages, without adequate justification, without appropriate intervals of in-person office visits and, at the same time,

b. revealed confidential information about the patient to another patient, and

c. documented patient information, in hospital notes, indicating:

i. that the patient suffered from dyspepsia and had previous proton pump inhibitor therapy, which is not noted anywhere else in the record, and

ii. lower dosing of Fentanyl and Xanax, than his actual prescriptions.

B. Respondent treated Patient B, who complained of fibromyalgia and chronic pain, from in or about January 2011 through in or about April 2016. Respondent prescribed Oxycodone and Xanax for Patient B. Respondent engaged in a personal and sexual relationship with Patient B. Respondent's care and treatment deviated from minimally accepted standards of care in that he:

1. Engaged in a personal and sexual relationship with the patient.

2. Failed to appropriately:

- a. evaluate the patient and clearly demonstrate what symptoms related to which diagnoses,
- b. perform and/or document annual histories and physical examinations, and document annual recommendations including but not limited to vaccinations, screening mammography, periodic bone density and colonoscopy testing,
- c. recognize a potential side effect to Bactrim and add this antibiotic to the patient's list of allergies,
- d. send the patient to an emergency room for thorough evaluation and monitoring of symptoms in September 2014,
- e. attempt treatment alternatives including but not limited to other medications and/or therapists,
- f. refer the patient to, and/or recommend consultations with, physical therapy, addiction specialist, pain management specialist, mental health provider, rheumatologist, orthopedist, cognitive behavioral therapy, and/or other alternative care practices, and
- g. maintain a record that accurately reflects the care and treatment rendered to the patient.

3. Inappropriately prescribed:

- a. controlled substances and/or modified dosages, without adequate justification,
- b. inconsistent doses of medications, without adequate medical rationale,

- c. excessively high doses of Oxycodone and/or Xanax,
- d. opioids to treat the patient's fibromyalgia, and
- e. IV Toradol and IV Dilaudid and Meclizine, for a possible first migraine in a 57-year-old with no history of migraines.

C. Respondent treated Patient C, who had a history of anxiety, chronic pain, back pain, Vitamin B deficiency, and Reflux disease, from in or about August 2013 through in or about May 2016. Respondent prescribed Klonopin, Oxycodone/Percocet, and Ambien for Patient C. Respondent's care and treatment deviated from minimally accepted standards of care in that he:

1. Failed to appropriately:

- a. follow-up on the patient's complaint of chest pain and visit to the ER in September 2014,
- b. evaluate the patient when presenting with a rash in December 2014,
- c. refer the patient for psychiatric consultation based on complaints of increased anxiety,
- d. follow-up on and/or modify treatment, after being notified that the patient was abusing alcohol and/or narcotics, and
- e. maintain a record that accurately reflects the care and treatment rendered to the patient.

2. Inappropriately prescribed:

- a. medications/controlled substances, without adequate justification,

b. Ambien, for 76-year-old, taking other centrally acting medications including Percocet and Klonopin, without offering and/or attempting alternative treatment modalities, and

c. refills for controlled substances in less than monthly intervals

D. Respondent treated Patient D, who had a history of anxiety, chronic pain, hemorrhoids, irritable bowel syndrome, and shoulder joint pain, from in or about February 2011 through in or about June 2016. Respondent prescribed Vicodin, Norco, Soma, and Xanax for Patient D. Respondent's care and treatment deviated from minimally accepted standards of care in that he:

1. Failed to appropriately:

a. evaluate the patient including but not limited to performing and/or noting adequate histories and appropriate physical exams,

b. follow-up on the patient's diagnosis of uterine cancer, treatment, and status of that condition, and/or the patient's neck/back pain,

c. demonstrate medical necessity, in medical clearance for shoulder surgery, particularly in light of a documented normal exam,

d. evaluate patient's report of syncope, days before elective surgery, and order and/or perform a thorough work-up, and

e. maintain a record that accurately reflects the care and treatment rendered to the patient.

2. Inappropriately:

a. prescribed medications/controlled substances, and modified prescriptions, without adequate justification,

- b. prescribed the maximum dose of Acetaminophen, and
- c. documented, in medical clearance for a hysterectomy, wrong dosing for Xanax and Soma, that the patient was on Axert which is not noted anywhere in the record, and that the patient is hypothyroid, when she was hyperthyroid.

E. Respondent treated Patient E, who had a history of diabetes, obesity, anxiety, insomnia, hypertension, and chronic pain, from in or about January 2011 through in or about April 2016. Respondent prescribed Hydrocodone, Oxycodone, Ambien, and Xanax for Patient E. Respondent's care and treatment deviated from minimally accepted standards in that he:

1. Failed to appropriately:

- a. evaluate the patient including but not limited to performing and/or noting adequate histories and appropriate physical exams,
- b. make recommendations:
 - i. regarding diet and weight loss,
 - ii. on how to handle anticoagulation dosing prior to scheduled surgery,
 - iii. for a follow-up colonoscopy in 3 years, after an adenomatous polyp was removed, and
 - iv. to consult with a dermatologist for a rash, and
- c. maintain a record that accurately reflects the care and treatment rendered to the patient.

2. Inappropriately:

- a. prescribed the maximum dose of Lortab/Hydrocodone and/or Percocet, in conjunction with Oxycodone-Acetaminophen combination tablets, without appropriate warning to the patient, and
- b. documented, in pre-op evaluations for a hip replacement and then a knee replacement, that there was no history of diabetes, smoking, or alcohol use, which are all inconsistent with the medical record.

SPECIFICATION OF CHARGES
FIRST-SECOND SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

1. Paragraphs A and A1.
2. Paragraphs B and B1.

THIRD-FOURTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

3. Paragraph A and its subparagraphs.
4. Paragraph B and its subparagraphs.

FIFTH-NINTH SPECIFICATIONS

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of:

5. Paragraph A and its subparagraphs.
6. Paragraph B and its subparagraphs.
7. Paragraph C and its subparagraphs.
8. Paragraph D and its subparagraphs.
9. Paragraph E and its subparagraphs.

TENTH-FOURTEENTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, as alleged in the facts of:

10. Paragraph A and A2c.
11. Paragraph B and B2g.
12. Paragraph C and C1e.
13. Paragraph D and D1e.
14. Paragraph E and E1c.

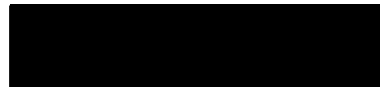
FIFTEENTH SPECIFICATION

REVEALING INFORMATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(23) by revealing information obtained in a professional capacity without the prior consent of the patient, as alleged in the facts of:

15. Paragraph A and A3b.

DATE: March 28, 2023
New York, New York



HENRY WEINTRAUB
Chief Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

**Requirements for Closing a Medical Practice Following a
Revocation, Surrender, Limitation or Suspension of a Medical License**

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure

place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender the Licensee's DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive, or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from

engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.

9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked, or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty and may include revocation of a suspended license.