



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

March 25, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Quist, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

Adrienne E. Marting, Esq.
Nelson Mullins Riley & Scarborough LLP
Atlantic Station
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363

Donald Lyle Gates, M.D.


Alan F. Kaufman, Esq.
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Atlantic Station
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Atlanta, Georgia 30363

RE: In the Matter of Donald Lyle Gates

Dear Parties:

Enclosed please find the Determination and Order (No. 22-056) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: cmg
Enclosure

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

In the Matter of

Donald Lyle Gates, M.D. (Respondent)

Administrative Review Board (ARB)
Determination and Order No. 22- 056

A proceeding to review a Determination by
a Committee (Committee) from the Board
for Professional Medical Conduct (BPMC)

COPY

Before ARB Members Torrelli, Rabin, Wilson and Milone
Administrative Law Judge Jean T. Carney drafted the Determination

For the Department of Health (Petitioner): David W. Quist, Esq.
For the Respondent: Adrienne E. Marting, Esq.

Following the Respondent's disciplinary action by the Georgia Composite Medical Board (GA Board), a BPMC Hearing Committee determined that the Respondent's conduct constituted professional misconduct. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a), both the Petitioner and the Respondent asked the ARB to review that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the hearing committee's determination and modifies the penalty imposed.

Committee Determination on the Charges

Pursuant to PHL § 230 *et seq*, BPMC and its Committees function as a duly authorized professional disciplinary agency of the State of New York. The BPMC Committee in this case conducted a hearing under the expedited hearing procedures (Direct Referral Hearing) in PHL § 230(10)(p). The Petitioner's Statement of Charges alleged that the Respondent committed professional misconduct under New York

Education Law (Educ. Law) § 6530(9)(d) by having disciplinary action taken against his license to practice medicine in Georgia (GA license), where the conduct resulting in the disciplinary action would constitute professional misconduct if committed in New York State. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee demonstrated that on October 14, 2020, the Respondent entered into a Public Consent Order with the GA Board to resolve charges that he had failed to submit required reports to the Georgia Department of Health for certain controlled substances he had prescribed during an 18 month period. The Respondent submitted the required reports and was ordered to pay a fine and administrative fees.

The Committee determined that the Respondent's conduct constituted professional misconduct under Educ. Law § 6530(9)(d) in that the conduct for which the Respondent was disciplined would violate Educ. Law § 6530(21), failure to file a report required by law, if committed in New York State. The Committee partially suspended the Respondent's license until he completed a course in bariatric medicine subject to prior approval of the Director of the OPMC.

Review History and Issues

The Hearing Committee rendered their Determination on September 22, 2021. This proceeding commenced on September 27, 2021, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the parties' briefs and reply briefs. The record closed when the ARB received the Respondent's reply brief on November 12, 2021.

Both parties argue that the penalty imposed by the Committee is not appropriate because it is not related to the charge of failing to file a report required by law. There was no allegation regarding the Respondent's clinical skills or patient care, therefore the parties assert that requiring the Respondent to complete a course in bariatric medicine is inconsistent with the Committee's findings of fact and conclusions of law.

The Petitioner contends that it would be appropriate to impose a penalty of censure and reprimand, and place the Respondent on probation for three years. The Petitioner submits that the terms of probation should include meeting with OPMC as requested to monitor compliance with Public Health Law and Department of Health regulations, including iSTOP/Prescription Monitoring Program (PMP); maintain a prescription log; periodic reviews of the Respondent's practice; and continuing medical education as directed by the OPMC.

The Respondent argues that he has learned from and remediated his mistake, fully complied with the GA Board's Order, and understands the importance of complying with reporting requirements. The Respondent asks that no further penalty be imposed on his license. In the alternative, the Respondent asks that any penalty consist of a letter of warning, reprimand, or nominal fine.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL § 230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd., 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct, 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in

determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's determination that the Respondent's conduct constitutes professional misconduct. Neither party disputed that determination. We overturn the imposition of a partial suspension on the Respondent's license until he completes a course in bariatric medicine.

The Respondent failed to submit required reports under Georgia law related to prescribing certain controlled substances. The Respondent was not charged with any violations related to his skills or patient care in his bariatric practice. Consequently,

requiring the Respondent to complete a course in bariatric medicine is not warranted. We impose a penalty of censure and reprimand, a term of probation of 18 months, with the term of probation tolled unless the Respondent returns to New York State to practice. The terms of probation include a requirement that the Respondent successfully complete a course in New York prescription reporting requirements and the rules of iSTOP/PMP, and maintain a prescription log.

Order

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent's conduct constituted professional misconduct pursuant to § 6530(9)(d).
2. The ARB overturns the partial suspension on the Respondent's license until he successfully completes a course in bariatric medicine.
3. The ARB imposes a censure and reprimand on the Respondent's license.
4. The ARB imposes 18 months of probation, to be tolled unless and until the respondent returns to practice medicine in New York, and pursuant to the terms and conditions attached hereto as Appendix I.

Linda Prescott Wilson

Jill Rabin, M.D.

Richard D. Milone, M.D.

Carmela Torrelli

In the Matter of Donald Lyle Gates, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order
in the Matter of Dr. Gates.

Dated: 24 March, 2022



Linda Prescott Wilson

In the Matter of Donald Lyle Gates, M.D.

Jill M. Rabin, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Gates.

Dated: 3/24/22, 2022



Jill M. Rabin, M.D.

In the Matter of Donald Lyle Gates, M.D.

Carmela Torrelli, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Gates.

Dated: March 24, 2022




Carmela Torrelli

In the Matter of Donald Lyle Gates, M.D.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and

Order in the Matter of Dr. Gates.

Dated: March 22, 2022


Richard D. Milone, M.D.

APPENDIX A

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to any action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, NY 12204, with the following information, in writing, and ensure that this information is kept current: a full description of his 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.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet with the Director's designee.
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC in writing if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume. Respondent shall fulfill any remaining probation terms and such additional requirements as the Director may reasonably impose related to the matters set forth in the Determination and Order, or are necessary to protect the public health.
6. OPMC's Director may review Respondent's professional performance. This review may include but shall not be limited to a review of office records, patient records, hospital charts, and/or electronic records; and periodic visits or interviews with Respondent and his staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information

required by State rules and regulations. In addition, the Respondent shall maintain an accurate and complete log of all medications prescribed. This log shall be made available to the OPMC as requested.

8. Respondent shall comply with all requirements of Article 33 of the Public Health Law and New York State Department of Health regulations; including all requirements related to the iSTOP/PMP Registry when writing prescriptions for Schedule II, III, and/or IV controlled substances. Respondent shall meet with OPMC as directed to provide proof of compliance.

9. Respondent shall enroll in and complete a continuing education program on New York State reporting requirements and the rules of iSTOP/PMP, subject to the written approval of the Director of OPMC and be completed within the first year of probation.

10. Respondent shall comply with these probationary terms and shall bear all associated costs. Upon receiving evidence of noncompliance with, or violations of these terms, the Director of OPMC and/or Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.