



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

September 22, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Donald Lyle Gates, MD



Adrienne E. Marting, Esq.
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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

RE: In the Matter of Donald Lyle Gates, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 21-199) 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.

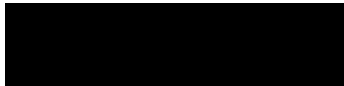
The notice of review served on the Administrative Review Board should be forwarded to:

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,


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**

COPY

-----X
IN THE MATTER :
OF :
DONALD LYLE GATES, M.D. :
-----X

**DETERMINATION
AND
ORDER**

A hearing was held on August 12, 2021, via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **WILLIAM A. TEDESCO, M.D.**, Chairperson, **GREGORY ALLEN THREATTE, M.D.** and **DAVID F. IRVINE, DHSc, P.A.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee in this matter. **NATALIE BORDEAUX, ADMINISTRATIVE LAW JUDGE**, served as the administrative officer.

The Department appeared by David W. Quist, Associate Attorney. A Notice of Referral Proceeding and Statement of Charges dated June 11, 2021 (Exhibit 1 and attached as Appendix I), were duly served upon Donald Lyle Gates, M.D. (Respondent) pursuant to PHL § 230(10)(d)(i). (Exhibit 1.) The Respondent was represented by Alan Kaufman, Esq., and testified on his own behalf. There were no other witnesses at the hearing. The Hearing Committee received and examined documents from the Department (Exhibits 1-4) and the Respondent (Exhibit B). A transcript of the proceeding was made. The Hearing Committee unanimously votes 3-0 to sustain the charge that the Respondent committed professional misconduct, in violation of Education Law (Educ. Law) § 6530(9)(d), and determined to impose the penalty of suspension, partially, until the Respondent successfully completes a course of retraining in bariatric medicine.

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)(d), by having disciplinary action taken against his license to practice medicine in Georgia where the conduct resulting in the disciplinary action taken would, if committed in New York state, constitute professional misconduct under the laws of New York state.

FINDINGS OF FACT

The Hearing Committee, by unanimous vote, hereby makes the following findings of fact:

1. The Respondent was authorized to practice medicine in New York on July 14, 2009 under license number 254038. (Exhibit 3.)
2. On October 14, 2020, the Respondent entered into a Public Consent Order with the Georgia Composite Medical Board (Georgia Board) to resolve charges that he failed to submit required reports to the Georgia Department of Public Health for most controlled substances he prescribed or dispensed during an eighteen-month period. Pursuant to this order, the Respondent was required to pay an administrative fee of \$1,100 and a \$3,000 fine. (Exhibit 4.)

CONCLUSIONS OF LAW

The Respondent entered into an agreement with the Georgia Board to resolve charges of non-compliance with reporting requirements of Georgia's Prescription Drug Monitoring Program. The Georgia Board found that the Respondent regularly dispensed phentermine, a controlled substance, in his office and that he failed to submit electronic reports to the Georgia Department of Public Health, required by Georgia law, for most controlled substances he prescribed or dispensed during an eighteen-month period. (Exhibit 4.) The Department's June

11, 2021 Statement of Charges alleges that the Respondent's misconduct in Georgia described in the October 14, 2020 consent order would, if committed in New York, constitute professional misconduct as defined in Educ. Law § 6530(21), failing to file a report required by law. (Exhibit 1.)

The Hearing Committee unanimously agreed that the Respondent's actions resulting in the Georgia Board's disciplinary actions would, if committed in New York, constitute misconduct pursuant to Educ. Law § 6530(21). The Hearing Committee thus determined that the Respondent violated Educ. Law § 6530(9)(d).

The Hearing Committee considered all possible penalties authorized by PHL § 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Department requested the imposition of a censure and reprimand, along with a \$5,000 fine, and three years of probation under the supervision of a practice monitor. Alternatively, the Department requested the imposition of a censure and reprimand and a fine in an amount deemed appropriate by the Hearing Committee. The Respondent requested dismissal of the charges because further penalties would not serve the public and offered no deterrent value.

The Hearing Committee deemed a censure and reprimand and a fine payable to a jurisdiction other than the location of the Respondent's errors unnecessary. The Hearing Committee also viewed the imposition of a three-year probation period while under the supervision of a practice monitor to be excessive, given the Respondent's immediate correction of his errors with the Georgia Board and given the very short span of time within which such errors occurred.

Although the Respondent unequivocally and consistently accepted responsibility for his errors, the Hearing Committee did not agree with his request to dismiss the charges because to do so would not adequately protect patients from potential errors associated with his prescribing and dispensing of controlled substances for weight loss patients. The Hearing Committee appreciated the Respondent's candor, as he explained that his medical practice shifted from emergency medicine to weight loss medicine. The Respondent acknowledged that he was initially unaware of reporting requirements pertaining to dispensing controlled substances, including phentermine (a weight loss medication), when he began prescribing and dispensing the medication as a convenience and cost savings to his patients.

In consideration of the basis for the Georgia Board's order and the nature of the Respondent's errors, the Hearing Committee concluded that the Respondent must successfully complete a retraining course in bariatric medicine before practicing medicine in New York.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent's license to practice medicine in the State of New York is hereby partially **SUSPENDED** under PHL § 230-a(2)(f) until such time as the Respondent successfully completes a course of retraining in bariatric medicine subject to the prior written approval of the Director of the OPMC.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Donald Lyle Gates, M.D. – Direct Referral

**DATED: Menands, New York
, 2021**

NYS DEPT OF HEALTH

SEP 22 2021


**Division of Legal Affairs
Bureau of Adjudication**

To: Donald Lyle Gates, M.D.

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Albany, NY 12237


William A. Tedesco, M.D.
Chairperson

Gregory Allen Threatte, M.D.
David F. Irvine, DHSc, P.A.

APPENDIX I

IN THE MATTER
OF
DONALD LYLE GATES, M.D.

STATEMENT
OF
CHARGES

DONALD LYLE GATES, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 14, 2009, by the issuance of license number 254038 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about October 14, 2020, the Georgia Composite Medical Board ("Board") issued a Public Consent Order, in which Respondent admitted that he had, over a period of eighteen months, failed to report most instances of his prescribing or dispensing a controlled substance to the Georgia Prescription Drug Monitoring Program, as required by law. Pursuant to the terms of the Consent Order, Respondent was required to pay administrative fees in the amount of \$1,100 and to pay a fine in the amount of \$3,000.
- B. The conduct resulting in the Board's Decision and Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York Education Law Section 6530(21) (failing to file a report required by law).

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 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(21)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B.

DATE: June 11, 2021
Albany, New York


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