

Public

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

IN THE MATTER

OF

JOHN MATTHEW GAYDEN, JR., M.D.
CO-11-10-5821-A

COMMISSIONER'S
SUMMARY
ORDER

TO: John Matthew Gayden, Jr., M.D.
1520 N. Highway A1A, Suite B
Indialantic, FL 32903

John Matthew Gayden, Jr., M.D.
REDACTED

The undersigned, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the State of Florida, Department of Health, has made a finding substantially equivalent to a finding that the practice of medicine by **JOHN MATTHEW GAYDEN, JR., M.D.**, Respondent, New York license number 156717, in that jurisdiction, constitutes an imminent danger to the health of its people, as is more fully set forth in the Order of Emergency Suspension of License, dated November 14, 2011, attached, hereto, as Appendix "A," and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, **JOHN MATTHEW GAYDEN, JR., M.D.**, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN VIOLATION OF THIS ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY DEFINED BY NEW YORK EDUCATION LAW §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in Florida.

The hearing will be held pursuant to the provisions of New York Public Health Law §230, and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Referral Proceeding to be provided to the Respondent after the final conclusion of the Florida proceeding. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

RESPONDENT SHALL NOTIFY THE DIRECTOR OF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT, NEW YORK STATE DEPARTMENT OF HEALTH, 433 RIVER STREET, SUITE 303, TROY, NY 12180-2299, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OF THE FINAL CONCLUSION OF THE PROCEEDING IMMEDIATELY UPON SUCH CONCLUSION.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATE: Albany, New York

April 23, 2012

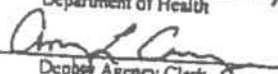
REDACTED

NIRAV R. SHAH, M.D., M.P.H.
Commissioner of Health
New York State Department of Health

Inquires should be directed to:

Joel E. Abelove
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

Appendix A

Final Order No. DOH-11-2622-^{ESD}-MQA
FILED DATE - 10-25-11
Department of Health
By: 
Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

IN RE: The Emergency Suspension of the License of
John M. Gayden, Jr., M.D.
License Number: ME 46431
Case Number: 2011-11227 ✓

ORDER OF EMERGENCY SUSPENSION OF LICENSE

H. Frank Farmer, Jr., M.D., Ph.D., F.A.C.P., State Surgeon General,
ORDERS the Emergency Suspension of the license of John M. Gayden, Jr., M.D.
(Dr. Gayden) to practice as a physician in the State of Florida. Dr. Gayden holds
license number ME 46431. His address of record is 1520 A1A Highway,
Indialantic, Florida 32903. The following Findings of Fact and Conclusions of Law
support the Emergency Suspension of Dr. Gayden's license to practice as a
physician in the State of Florida.

INTRODUCTION

On three occasions between August 8 and October 5, 2011, Dr. Gayden
treated Patient M.J. with potentially lethal quantities and dosages of oxycodone
and Xanax. At no time did Dr. Gayden make any medical inquiry with the patient
regarding her medical condition or treatment. Instead, at each appointment, Dr.
Gayden merely said hello to the patient, inquired as to whether the patient enjoyed
her weekend and then provided the patient with multiple prescriptions for
controlled substances. In addition, Dr. Gayden engaged in sexual activity with

Patient S.R. and provided the patient with controlled substances, including marijuana, for recreational use.

FINDINGS OF FACT

1. The Department of Health ("Department") is the state agency charged with regulating the practice of medicine, pursuant to Chapters 20, 456 and 458, Florida Statutes. Section 456.073(8), Florida Statutes (2011), empowers the State Surgeon General to summarily suspend Dr. Gayden's license to practice as a physician in the State of Florida in accordance with Section 120.60(6), Florida Statutes (2011).

2. At all times material to this Order, Dr. Gayden was licensed to practice as a physician in the State of Florida, pursuant to Chapter 458, Florida Statutes (2011), and practiced medicine at Indialantic Internal Medicine, Inc. (Clinic), a registered pain management clinic located at 1520 A1A Highway, Indialantic, Florida 32903. While practicing at the Clinic, Dr. Gayden prescribed large doses and quantities of oxycodone and Xanax to his patients.

3. Oxycodone (brand name Roxicodone) is an opioid and is commonly prescribed to treat pain. Opioid, or opiate, drugs have similar actions as the drug opium and are typically prescribed to treat pain. Opioid drugs are synthetically manufactured, while opiate drugs are naturally occurring, but the terms opioid and

opiate are often used interchangeably. Opioid drugs are addictive and subject to abuse. According to Section 893.03(2), Florida Statutes (2011), oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States. Abuse of oxycodone may lead to severe psychological or physical dependence.

4. Xanax is a brand of alprazolam (benzodiazepine) and is prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes (2010-2011), alprazolam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States. Abuse of alprazolam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

Facts specific to Patient M.J.

5. In or about August 2011, the Florida Department of Law Enforcement (FDLE) began conducting an undercover investigation regarding Dr. Gayden's medical practice. In furtherance of their investigation, M.J., one of Dr. Gayden's patients, agreed to assist FDLE with the investigation.

6. On August 8, 2011, Patient M.J., equipped with undercover surveillance equipment, presented to Dr. Gayden to receive medical treatment.

Upon entering the examination room, Dr. Gayden discussed the weather and inquired as to whether Patient M.J. enjoyed her weekend. Dr. Gayden sat at a desk, reviewed several papers within a folder and wrote Patient M.J. prescriptions for 150 tablets of oxycodone 30 mg and 120 tablets of Xanax 1 mg. Patient M.J. then left the Clinic.

7. On September 6, 2011, Patient M.J., equipped with undercover surveillance equipment, presented to Dr. Gayden for a follow-up appointment. Upon entering the examination room, Dr. Gayden inquired as to whether Patient M.J. enjoyed her weekend. Dr. Gayden then sat at a desk, reviewed several papers within a folder and wrote Patient M.J. prescriptions for 150 tablets of oxycodone 30 mg and 120 tablets of Xanax 1 mg. Patient M.J. then left the Clinic.

8. On October 5, 2011, Patient M.J., equipped with undercover surveillance equipment, presented to Dr. Gayden for a follow-up appointment. Upon entering the examination room, Dr. Gayden inquired as to whether Patient M.J. enjoyed her weekend. Dr. Gayden then sat at a desk, reviewed several papers within a folder and wrote Patient M.J. prescriptions for 150 tablets of oxycodone 30 mg and 120 tablets of Xanax 1 mg. Patient M.J. then submitted to a urine drug screen and left the Clinic.

9. Each of Patient M.J.'s appointments with Dr. Gayden lasted

approximately 45-60 seconds. At no time did Dr. Gayden attempt to examine the patient or discuss the patient's symptoms, medical treatment, pain level or anything related to her medical condition. Dr. Gayden merely gave her prescriptions for large doses and quantities of controlled substances.

10. The Department retained an independent medical expert who opined that Dr. Gayden violated the standards governing the prescription of controlled substances to treat chronic pain.

Facts specific to Patient S.R.

11. In or about October 2010, Dr. Gayden met Patient S.R., a 17-year-old female, in the parking lot of the Clinic. Dr. Gayden began seeing Patient S.R. socially and began a sexual relationship with Patient S.R. while she was still a minor. During their relationship, Dr. Gayden provided Patient S.R. with marijuana and Roxicodone 30 mg tablets on multiple occasions without a prescription.

12. Marijuana contains tetrahydrocannabinols (THC), which are the psychoactive ingredients in marijuana. According to Section 893.03(1), Florida Statutes (2010-2011), THC is a Schedule I controlled substance that has a high potential for abuse and has no currently accepted medical use in treatment in Florida. Its use under medical supervision does not meet accepted safety standards.

COMPREHENSIVE FINDINGS OF FACT

13. Since 2005, the State of Florida has experienced a surge of pill mills¹ and a resulting widespread abuse of prescription drugs among its citizens.² In 2010, prescription drugs were responsible for more deaths in Florida than illicit drugs. Oxycodone was the first leading cause of drug-related deaths, and the incidence of Oxycodone identified in toxicology reports increased by 10.9% in January through June 2010 when compared to July through December 2009. Benzodiazepines were the second leading cause of drug-related deaths in the State of Florida from January 2010 through June 2010, and the incidence of benzodiazepines identified in toxicology reports increased by 3% during that time period.

14. In September 2010, the U.S. Department of Health and Human Services (HHS) issued the results of a 2009 National Survey on Drug Use and Health. The HHS report found that there were 7.0 million individuals in the U.S. who used prescription drugs for non-medical reasons within the previous one-month period during 2009. Of those individuals, 55.3% received the prescription drug from a friend or relative; 17.6% reported that they received the drug from one doctor; 4.8 % received the medication from a drug dealer or a stranger; and 0.4 % purchased the drug on the Internet.

¹ The term "pill mill" is commonly used by law enforcement to identify a pain management clinic that issues prescriptions for controlled substances illegally and without medical necessity.

² This health emergency is not restricted to the State of Florida. Indeed, the United States Centers for Disease Control and Prevention has declared prescription drug overdose a public health epidemic.

15. Physicians who liberally provide prescriptions for controlled substances to patients who have no legitimate medical need for the drugs and often divert and resell the drugs to others, pose a serious danger to the public health, welfare and safety. This is so because such controlled substances are often potentially addictive and because the misuse or abuse of these drugs can cause serious and lasting medical injury and death.³

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the State Surgeon General concludes as follows:

1. Section 120.60(6), Florida Statutes (2011), authorizes the Department to suspend or restrict a physician's license if the Department finds that the physician presents an immediate, serious danger to the public health, safety or welfare.

2. The State Surgeon General has jurisdiction over this matter pursuant to Sections 20.43 and 456.073(8), Florida Statutes (2011), and Chapter 458, Florida Statutes (2011).

3. Section 458.331(1)(q), Florida Statutes (2010-2011), allows the Board of Medicine to discipline a physician for prescribing, dispensing, administering, mixing or otherwise preparing a legend drug, including any controlled substance,

³ The Proliferation of Pain Clinics in South Florida, November 19, 2009, Broward County Grand Jury report.

other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

4. Dr. Gayden violated Section 458.331(1)(q), Florida Statutes (2010-2011), in one or more of the following manners:

- a. By excessively or inappropriately prescribing controlled substances to Patient M.J.;
- b. By failing to conduct any medical evaluation of Patient M.J. prior to prescribing controlled substances to the patient;
- c. By providing Roxycodone tablets to Patient S.R. without a prescription; and/or
- d. By providing marijuana to Patient S.R. for recreational use.

5. Section 458.331(1)(t)1., Florida Statutes (2010-2011), subjects a physician to discipline for committing medical malpractice as defined in Section 456.50, Florida Statutes (2010-2011). "Medical malpractice" is defined by Section 456.50(1)(g), Florida Statutes (2010-2011), as "the failure to practice medicine in

accordance with the level of care, skill, and treatment recognized in general law related to health care licensure." Section 456.50(1)(e), Florida Statutes (2010-2011), provides that the "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care that is specified in Section 766.102(1), Florida Statutes (2010-2011), which is set forth as follows:

The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

Section 458.331(1)(t)1., Florida Statutes (2010-2011), directs the Board to give "great weight" to this provision of Section 766.102, Florida Statutes (2010-2011).

6. Dr. Gayden violated Section 458.331(1)(t)1., Florida Statutes (2010-2011), in one or more of the following manners:

- a. By excessively or inappropriately prescribing controlled substances to Patient M.J.;
- b. By failing to conduct any medical evaluation of Patient M.J. prior to prescribing controlled substances to the patient;
- c. By providing Patient S.R. with Roxicodone for recreational use; and/or
- d. By providing Patient S.R. with marijuana for recreational use.

7. Section 458.331(1)(nn), Florida Statutes (2011), subjects an physician to discipline for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

8. Section 458.3265(2)(c), Florida Statutes (2011), provides, in part:

A physician must perform a physical examination of a patient on the same day that he or she dispenses or prescribes a controlled substance to a patient at a pain-management clinic. ...

9. Dr. Gayden violated Section 458.3265(2)(c), Florida Statutes (2011), by failing to perform a physical evaluation of Patient M.J. prior to prescribing controlled substances.

10. Similarly, Section 456.44(3), Florida Statutes (2011), sets forth the standards of practice for prescribing controlled substances and provides, in part:

The patient shall be seen by the physician at regular intervals, not to exceed 3 months, to assess the efficacy of treatment, ensure that controlled substance therapy remains indicated, evaluate the patient's progress toward treatment objectives, consider adverse drug effects, and review the etiology of the pain. Continuation or modification of therapy shall depend on the physician's evaluation of the patient's progress. If treatment goals are not being achieved, despite medication adjustments, the physician shall reevaluate the appropriateness of continued treatment. The physician shall monitor patient compliance in medication usage, related treatment plans, controlled substance agreements, and indications of substance abuse or diversion at a minimum of 3-month intervals.

11. Dr. Gayden violated Section 456.44(3), Florida Statutes (2011), by failing to assess the efficacy of treatment, ensure that controlled substance therapy

remains indicated, evaluate the patient's progress toward treatment objectives, review the etiology of the pain or evaluate the patient in order to consider the continuation or modification of therapy.

12. Section 458.331(1)(j), Florida Statutes (2010-2011), subjects a physician to discipline for exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity.

13. Section 456.063, Florida Statutes (2010-2011), defines sexual misconduct as a health care practitioner who uses the practitioner-patient relationship to engage or attempt to engage the patient in verbal or physical sexual activity outside the scope of the professional practice. Similarly, Rule 64B8-9.008(1), Florida Administrative Code, prohibits sexual contact with a patient.

14. Dr. Gayden violated Sections 456.063 and 458.331(1)(j), Florida Statutes (2010-2011), and Rule 64B8-9.008, Florida Administrative Code, by engaging in sexual activity with Patient S.R.

15. The facts recited above support the conclusion that Dr. Gayden is using his medical license to prescribe large quantities of oxycodone and Xanax without any medical justification or indication or regard for the health, safety and well-being of the individuals he sees as patients.

16. Dr. Gayden's acts manifest such a pattern and propensity to practice below the appropriate standard of care that a continuation of this practice poses an immediate serious danger to the public health, safety or welfare.

17. A physician licensed in the State of Florida is one of a small number of licensed professionals allowed to prescribe, administer, and dispense controlled substances. The Legislature has vested a trust and confidence in these licensed professionals by permitting them to prescribe drugs with a high potential for abuse and harm. Inappropriate prescribing of highly addictive controlled substances to patients presents a danger to the public health, safety, or welfare, and does not correspond to that level of professional conduct expected of one licensed to practice medicine in this state.

18. Dr. Gayden has demonstrated a disconcerting disregard for the duties and responsibilities imposed upon a physician practicing in the State of Florida and for the health and welfare of his patients and the citizens of Florida. Dr. Gayden's practice of inappropriate prescribing of highly addictive and dangerous drugs constitutes a breach of the trust and confidence that he enjoys as a physician licensed to practice medicine, which includes the ability to prescribe controlled substances. Dr. Gayden's conduct constitutes an immediate and serious danger to the public because he prescribed controlled substances to Patients S.R. and M.J.

without any justifications therefor and without any attempt at conducting a medical evaluation. Dr. Gayden's repeated disregard for the safety and well-being of his patients demonstrates that Dr. Gayden's violation of the standards governing the practice of medicine is likely to continue.

19. . The fact that Dr. Gayden engaged in sexual activity with Patient S.R., provided controlled substances to Patient S.R. for recreational use and prescribed controlled substances to Patient M.J. without performing any medical evaluation of the patient makes obvious that a less restrictive sanction, such as an emergency restriction order preventing Dr. Gayden from prescribing medications, would not be sufficient to protect the public from the danger posed by his continued practice. Nothing short of the immediate suspension of Dr. Gayden's license to practice medicine would be sufficient to protect the public from the danger of harm presented by Dr. Gayden.

20. Dr. Gayden's continued practice as a physician constitutes an immediate serious danger to the health, safety, or welfare of the public, and this summary procedure is fair under the circumstances to adequately protect the public.

IN RE: The Emergency Suspension of the License
of John M. Gayden, Jr., M.D.
License Number: ME 46431
Case Number: 2011-11227

In accordance with Section 120.60(6), Florida Statutes (2011), it is

ORDERED THAT:

1. The license of John M. Gayden, Jr., M.D., license number ME 46431, is hereby immediately suspended.

2. A proceeding seeking formal suspension or discipline of the license of John M. Gayden, Jr., M.D., to practice as a physician will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes (2011).

DONE and ORDERED this 24 day of October, 2011.

REDACTED

H. Frank Farmer, Jr., M.D., Ph.D. F.A.C.P.
State Surgeon General
Department of Health

PREPARED BY:
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IN RE: The Emergency Suspension of the License
of John M. Gayden, Jr., M.D.
License Number: ME 46431
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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Sections 120.60(6), and 120.68, Florida Statutes, the Department's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Petition for Review, in accordance with Florida Rule of Appellate Procedure 9.100, with the Department of Health and a second copy of the petition accompanied by a filing fee prescribed by law with the District Court of Appeal within thirty (30) days of the date this Order is filed.