

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

IN THE MATTER  
OF  
GERALD BRIAN APPLGATE, M.D.

CONSENT  
ORDER

BPMC No. #08-234

Upon the application of **GERALD BRIAN APPLGATE, M.D.**, (Respondent), 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

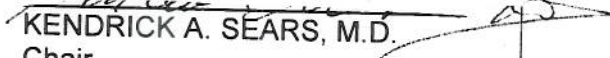
by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, or

upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 12-9-2008

Redacted Signature

  
KENDRICK A. SEARS, M.D.  
Chair  
State Board for Professional  
Medical Conduct

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

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IN THE MATTER  
OF  
GERALD BRIAN APPLGATE, M.D.  
CO-06-04-2257-A

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CONSENT  
AGREEMENT  
AND ORDER

GERALD BRIAN APPLGATE, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about October 31, 1994, I was licensed to practice as a physician in the State of New York, and issued license number 197471 by the New York State Education Department.

My current address is ' Redacted Address ), and I will advise the Director of the Office of Professional Medical Conduct of any change of my address thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with two (2) Specifications of professional misconduct, based solely on the May 14, 2008, State Medical Board of Ohio, Order and Entry.

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 two (2) Specifications, in full satisfaction of the charges against me, and agree to the following penalty:

One (1) year suspension of my license to practice medicine to run concurrent with and coterminous with and until the successful completion of the suspension imposed by the May 14, 2008, State Medical Board of Ohio, Order and Entry (hereinafter "Ohio Order").

Respondent shall fully comply with the PROBATIONARY terms, conditions, and limitations imposed by the Ohio Order and any extension(s) and/or modification(s) thereof.

Respondent shall provide a written authorization for the Ohio Board to provide the Director of OPMC with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Ohio Order.

Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether Respondent has been in compliance with the Ohio Order during the declaration period specified.

Should Respondent return to the practice of medicine in the State of New York or any other jurisdiction where that practice is predicated upon Respondent's New York State medical license, prior to the successful completion of the State of Ohio PROBATIONARY terms, conditions, and limitations, and any extension(s) and/or modification(s) thereof, Respondent shall provide ninety (90) days notice in writing to the Director, OPMC. The Director in his sole discretion, may impose whatever limitations, or further conditions, he deems appropriate.

I agree, further, that the Consent Order shall impose the following conditions:

That Respondent shall remain in continuous compliance with all requirements of New York Education Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in New York Education Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent 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 Consent 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.



I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by New York Education 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 New York 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 Consent 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 Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Consent Order are authorized by New York Public Health Law §§ 230 and 230-a, and that the Board and OPMC 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 I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

AFFIRMED:

DATED: NOV 17, 2008

Redacted Signature

GERALD BRIAN APPELLE, M.D.  
Respondent

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

DATE: 11-19-08

Redacted Signature

ANDREA SCHILLACI  
Attorney for Respondent

DATE: 30 Nov 2008

Redacted Signature

ROBERT BOGAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 12/5/08

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

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

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IN THE MATTER  
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GERALD BRIAN APPLGATE, M.D.  
CO-06-04-2257-A

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AMENDED  
STATEMENT  
OF  
CHARGES

GERALD BRIAN APPLGATE, M.D., Respondent, was authorized to practice medicine in New York state on October 31, 1994, by the issuance of license number 197471 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 14, 2008, the State Medical Board of Ohio (hereinafter "Ohio Board"), by an Order and Entry (hereinafter "Ohio Order"), inter alia, suspended Respondent's certificate to practice medicine and surgery for one (1) year from the effective date of a June 14, 2006, Ohio Board, Order, which suspension has already been served, and upon reinstatement that took effect on June 17, 2007, placed his certificate to practice medicine on PROBATIONARY terms, and conditions and limitations for a period of at least one (1) year, based on about August 1993 signing and submitting, to the Ohio Board, an Application for Certificate - Medicine or Osteopathic Medicine, certifying that information provided herein was true, wherein he intentionally made a false statement.

B. The conduct resulting in the Ohio Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New State law:

1. New York Education Law 6530(2) (practicing the profession fraudulently); and/or
2. New York Education Law §6530(21) (willfully making or filing a false report required by law or by the department of health or the education department).



**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education 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, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(d) by having his license to practice medicine suspended and/or having had other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *Nov. 25*, 2008  
Albany, New York

Redacted Signature

PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct