



**Department  
of Health**

**KATHY HOCHUL**  
Governor

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

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

February 7, 2023

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Richard Chmielewski, D.O.  



Re: License No. 137275

Dear Dr. Chmielewski:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 23-022. This order and any penalty provided therein goes into effect February 14, 2023.

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,

  
Michael S. Jakubowski, M.D.  
Interim Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Jennifer M. Schwartzott, Esq.  
Bond, Schoeneck & King  
350 Linden Oaks, Third Floor  
Rochester, New York 14625-2825

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

BPMC No. 23-022

**IN THE MATTER**  
**OF**  
**RICHARD CHMIELEWSKI, D.O.**

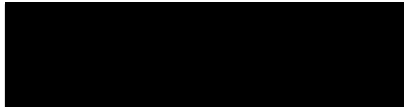
CONSENT  
ORDER

Upon the application of (Respondent) RICHARD CHMIELEWSKI, D.O. 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: 2/06/2023

  
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  
RICHARD CHMIELEWSKI, D.O.**

CONSENT  
AGREEMENT

RICHARD CHMIELEWSKI, D.O., represents that all of the following statements are true:

1. That on or about February 2, 1979, I was licensed to practice as a physician in the State of New York, and issued License No. 137275 by the New York State Education Department.

2. My current address is [REDACTED] and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

3. I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A," attached to and part of this Consent Agreement.

4. I shall agree not to contest the allegations, in full satisfaction of the charges against me, and agree to the following penalty:

- Pursuant to New York Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for 36 months, with the entire period stayed.
- Pursuant to New York Pub. Health Law § 230-a(9), I shall be placed on probation for 36 months, subject to the terms set forth in attached Exhibit "B."

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

- I shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a.
- I shall remain in continuous compliance with all requirements of N.Y. Educ 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 N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State;
- I shall remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall report to the Department all information required by the Department to develop a public physician profile for the licensee; continue to notify the Department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update my profile information within six months prior to the expiration date of the registration period. I shall submit changes to my physician profile information either electronically using the Department's secure web site or on forms

prescribed by the Department, and shall attest to the truthfulness, completeness and correctness of any changes submitted to the Department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as I remain a licensee in New York State. My failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

- I 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 my 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. I 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 I receive written notification from the Office of Professional Medical

Conduct, Physician Monitoring Program, that OPMC has determined that I have fully complied with and satisfied the requirements of the Order, regardless of tolling; and

- I 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. I shall respond in a timely manner to all OPMC requests for written periodic verification of my compliance with this Consent Order. I shall meet with a person designated by the Director of OPMC, as directed. I shall respond promptly and provide all documents and information within my control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as I remain licensed in New York State.

6. I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

7. 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.

8. I ask the Board to adopt this Consent Agreement.

9. 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 N.Y. Pub. Health Law.

10. 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 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.

11. I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. 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.

12. 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.

13. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 1/24/2023




RICHARD CHMIELEWSKI, D.O.  
RESPONDENT



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

DATE: 2/2/23

  
JENNIFER W. SCHWARTZOTT, ESQ.  
Attorney for Respondent

DATE: 2/2/23

  
MARC S. NASH  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 2/03/2023

  
SHELLY WANG BANDAGO  
Director  
Office of Professional Medical Conduct

EXHIBIT "A"

Statement of Charges

IN THE MATTER  
OF  
RICHARD CHMIELEWSKI, D.O.

STATEMENT  
OF  
CHARGES

RICHARD CHMIELEWSKI, D.O., the Respondent, was authorized to practice medicine in New York State on or about February 2, 1979 by the issuance of license number 137275 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. During the periods of in or about November 2013 and in or about May 2019, Respondent failed to render, properly bill, and/or note appropriate care to Patients A-D.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**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:

1. Paragraph A.

SECONDSPECIFICATION

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:

2. Paragraph A.

DATE: February 2, 2023  
Albany, New York

  
JERRY J. CONKLIN  
Deputy Director  
Bureau of Professional Medical Conduct

## EXHIBIT "B"

### 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 an action pursuant to N.Y. Pub. Health Law § 230(19).
- 2) Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 3) Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
- 4) 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 Respondent 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 and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
- 5) The Director of OPMC 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 interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 6) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.

- 7) Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
- 8) Respondent shall enroll in and successfully complete continuing education as directed by the Office of Professional Medical Conduct, subject to the Director of OPMC's prior written approval.
- 9) No more than 30 days after the Consent Order's effective date, Respondent shall practice medicine only when monitored by a licensed physician, board-certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the Director of OPMC's written approval. No more than 30 days after learning that the approved practice monitor is no longer willing or able to serve or no more than 30 days after having been notified by the Director that the practice monitor has been discharged for cause, which shall include but not be limited to the inadequacy of the practice monitor's reports and/or performance, Respondent shall have an approved successor in place, subject to the Director's written approval. Upon approval, the new practice monitor shall perform the duties described in (a) and (c) below. Regardless of the reason necessitating a replacement, if the Director does not approve Respondent's proposed new practice monitor, Respondent shall immediately cease the practice of medicine, unless notified by the Director, in writing, of an extension, which may be granted at the Director's discretion. In that event, Respondent shall propose another practice monitor, which the Director has 30 days to approve or disapprove until a practice monitor is accepted. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
  - a) Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
  - b) Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - c) Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.

d) Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

10) No more than 30 days after the Order's effective date, Respondent shall only practice medicine when the practice includes a billing monitor. Respondent shall make available for review by a third-party billing monitor any and all office and accounts records, as directed by OPMC. Such billing monitor shall be proposed by Respondent and approved, in writing, by the Director of OPMC. Respondent shall fully cooperate in the review process. The review will determine whether Respondent's medical billing and related documentation practices are conducted in a manner that complies with all Federal, State, and local statutes and regulations regarding billing for medical services and is accurate, under all relevant circumstances, as to the services rendered and the clinical bases for such services. No more than 30 days after learning that the approved billing monitor is no longer willing or able to serve or no more than 30 days after having been notified by the Director that the billing monitor has been discharged for cause, which shall include but not be limited to the inadequacy of the billing monitor's reports and/or performance, Respondent shall have an approved successor in place, subject to the Director's written approval. Upon approval, the new billing monitor shall perform the duties described in (b) and (c) below. Regardless of the reason necessitating a replacement, if the Director does not approve Respondent's proposed new billing monitor, Respondent shall immediately cease the practice of medicine, unless notified by the Director, in writing, of an extension, which may be granted at the Director's discretion.

In that event, Respondent shall propose another billing monitor, which the Director has 30 days to approve or disapprove until a billing monitor is accepted. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

- a) Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the billing monitoring.
- b) Respondent shall cause the billing monitor to report quarterly, in writing, to the Director of OPMC.
- c) Any perceived deviation from proper billing practices or refusal to cooperate with the billing monitor shall be reported within 24 hours to OPMC.

11) Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a

violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.