

October 10, 2013

CERTIFIED MAIL-RECEIPT REQUESTED

Jose Alarcon, M.D.
REDACTED

Re: License #141004

Dear Dr. Alarcon:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 13-318. This Order of Conditions pursuant to Public Health Law Section 230 is effective October 17, 2013.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Carolyn Shearer, Esq.
Bond, Schoeneck & King
111 Washington Avenue
Albany, NY 12210-2211

**IN THE MATTER
OF
JOSE ALARCON, M.D**

**ORDER
OF CONDITIONS
PURSUANT TO
N.Y. PUB. HEALTH
LAW § 230**

Upon the application of JOSE ALARCON, M.D. (Licensee) in the attached Stipulation and Application for an Order of Conditions Pursuant to N.Y. Pub. Health Law § 230 (Application), which is made a part of this Order of Conditions Pursuant to N.Y. Pub. Health Law § 230 (Order), it is agreed that:

- the Application and its terms are adopted; and
- this Order shall be effective upon issuance by the Board, either by mailing of a copy of this Order by first class mail to Licensee at the address in the attached Application or by certified mail to Licensee's attorney, or upon facsimile transmission to Licensee or Licensee's attorney, whichever is first.

SO ORDERED.

DATE: 10/9/2013

REDACTED

ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

**IN THE MATTER
OF
JOSE ALARCON, M.D.**

APPLICATION FOR
ORDER OF
CONDITIONS
PURSUANT TO NY
PUBLIC HEALTH LAW
§230

JOSE ALARCON, M.D., represents that all of the following statements are true:

That on or about January 18, 1980, I was licensed to practice as a physician in the State of New York and issued License No. 141004 by the New York State Education Department.

My current address is REDACTED . I am affiliated with the following hospitals and/or facilities: Samaritan Hospital/Northeast Health, 2215 Burdette Avenue, Troy, New York 12180.

I understand that the New York State Board for Professional Medical Conduct ("the Board") has investigated the issues set forth in attached Exhibit A.

I request that the Board and the Director of the Office of Professional Medical Conduct ("the Director"), in reliance upon the results of the investigation to date and upon my representation that I have practiced medicine without incident for at least a year before this Application, conclude the investigation of these issues, provided I successfully and without incident comply with the Conditions set forth below. In consideration of the Board and the Director granting this Application, and upon the Board's election not to bring disciplinary charges against me, I agree that the Board and the Director shall issue an Order of Conditions Pursuant to N.Y. Pub. Health Law § 230. Except as specified below,

the terms and conditions imposed by this Order shall remain in effect from the Order's effective date for as long as I have a license to practice medicine in New York State, and shall set the following Conditions upon my practice:

- 1) Effective December 6, 2013, I will cease any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition. I shall be precluded from further reliance upon my license to practice medicine to exempt me from the licensure, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated or certified by the Board of Regents, Department of Education, Department of Health, or the Department of State.
- 2) Licensee's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Licensee as defined in N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of this Order and may subject Licensee to an action pursuant to N.Y. Pub. Health Law § 230.
- 3) That I shall, within 30 days of December 6, 2013, notify the New York State Education Department, Division of Professional Licensing Services, that my license status is "inactive," and shall provide proof of such notification to the Director of OPMC immediately upon having done so; and that I shall comply with all conditions set forth in attached Exhibit "B" (Requirements for Closing a Medical Practice").

- 4) Licensee, within 15 days of December 6, 2013, shall return any and all official New York State prescriptions to the Bureau of Narcotic Enforcement, and, in the event Licensee holds a Drug Enforcement Administration (DEA) Certificate for New York State, Licensee shall surrender Licensee's Certificate to the DEA within 15 days of December 6, 2013. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY, 10011. Further, within 30 days of returning these prescriptions and surrendering the Certificate, Licensee shall provide documentary proof of these transaction(s) to the Director of OPMC.
- 5) Licensee shall cooperate fully with the Office of Professional Medical Conduct ("OPMC") in its administration and enforcement of this Order and in any future investigation of Licensee. Licensee shall respond in a timely manner to all OPMC requests for written periodic verification of compliance with the terms of this Order, meet in person with the Director's designee, and respond promptly and provide all documents and information within Licensee's control to OPMC, as directed. This Condition shall take effect on December 6, 2013 and will continue while Licensee possesses a license.

I further agree that the Order of Conditions for which I apply shall impose the following conditions:

Licensee shall comply with this Order, and all its terms and Conditions, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or

violation of these terms, the Director and/or the Board may initiate a proceeding against Licensee under N.Y. Pub. Health Law § 230.

I stipulate that my failure to comply with these conditions shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I understand that nothing in this Application shall be construed as an admission by me of any act of alleged misconduct or as a finding of misconduct as to those issues referred to in Exhibit A. I deny any acts of misconduct and reserve my right to assert all defenses I may have in any later or other proceeding.

I understand and agree that my failure to comply with, successfully complete, or satisfy any of the material conditions of this Order, shall vest the Director with the authority, in the exercise of reasonable discretion, to vacate this agreement and shall permit the Director to pursue further investigation and/or prosecution of misconduct charges against me as to the issues set forth in Exhibit A to the full extent authorized by the Public Health Law and the Education Law.

I understand that an Order issued upon this Application does not bar prosecution for professional misconduct based upon allegations of violations of N.Y. Educ. Law § 6530 unrelated to the issues set forth in Exhibit A, whether those alleged violations occurred before or after this Application. The Director may, at such time, also direct counsel to prepare charges that include allegations as to the issues set forth in Exhibit A.

I agree that, if the Board grants this Application, the Chair of the Board shall issue an Order of Conditions in accordance with its terms. I further agree that the Department of Health shall notify the National Practitioner Data Bank and the Federation of State Medical

Boards of this Order of Conditions pursuant to N.Y. Pub. Health Law § 230 and that the change in my licensure status is not disciplinary in nature. This Order of Conditions shall be posted on the Department of Health website(s).

I make this Application of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Application, I waive my right to contest the Order for which I apply, whether administratively or judicially, I agree to be bound by the Order, and I ask that the Board grant this Application.

I understand and agree that the attorney for the Department of Health, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and 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.

DATE 10-02-13

REDACTED

JOSE ALARCON, M.D.
LICENSEE

The undersigned agree to Licensee's attached Order of Conditions and to its proposed terms and conditions.

DATE: 10/4/13

REDACTED

CAROLYN SHEARER, ESQ.
Attorney for Licensee

DATE: October 7, 2013

REDACTED

CINDY M. FASCIA
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 10/9/13

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT B

Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 15 days of December 6, 2013, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of December 6, 2013, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
3. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of December 6, 2013, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the

original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

4. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of December 6, 2013, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
5. Within 15 days of December 6, 2013, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
6. Within 15 days of December 6, 2013, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
7. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to December 6, 2013.
8. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business

Corporation Law. Such divestiture shall occur within 90 days of December 6, 2013. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of December 6, 2013.