

**NEW YORK**  
state department of  
**HEALTH**

Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

October 23, 2013

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

James Hoyt Kern, M.D.  
20320 Northwest Freeway  
Suite 400A  
Houston, TX 77065

Re: License No. 152312

Dear Dr. Kern:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 13-344. This order and any penalty provided therein goes into effect October 30, 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

Enclosure

cc: Michael A. Sharp, Esq.  
Sharp & Cobos  
4705 Spicewood Springs Road, Suite 100  
Austin, TX 78759

---

IN THE MATTER  
OF  
JAMES HOYT KERN, M.D.

---

CONSENT  
ORDER

Upon the application of **JAMES HOYT KERN, M.D.**, (Respondent), in the attached Consent Agreement, that 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 or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 10/22/2013

**REDACTED**

---

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

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

---

IN THE MATTER

CONSENT

OF

AGREEMENT

JAMES HOYT KERN, M.D.  
CO-12-06-3180-A

---

**JAMES HOYT KERN, M.D.**, (Respondent), representing that all of the following statements are true, deposes and says:

That on or about October 29, 1982, I was licensed to practice medicine in the State of New York and issued license number 152312 by the New York State Education Department.

My current address is 20320 Northwest Freeway, Suite 400A, Houston, TX 77065, and I will advise the Director (Director) of the Office of Professional Medical Conduct (OPMC) of any change of my address within thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one (1) Specification of professional misconduct.

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 one (1) Specification, and agree to the following sanction:

Censure and Reprimand;

Respondent shall comply fully with the Texas Medical Board (hereinafter "Texas Board") Agreed Order dated June 8, 2012 (hereinafter "Texas Order"), and any extensions or modifications thereof.

Respondent shall provide a written authorization for the Texas 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 Texas 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 Texas Order during the declaration period specified.

I currently do not practice medicine in the State of New York, nor do I practice in a jurisdiction where my practice is based solely on my New York license. Should I return to the practice of medicine in the State of New York or in any jurisdiction where that practice is predicated upon my New York State medical license, I shall provide ninety (90) days prior notice in writing to the Director, OPMC. This written notice must include a full description of my anticipated practice. The Director in his or her sole discretion, may impose whatever limitations, or further conditions, he or she 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 effective date of the Consent Order and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall remain in continuous compliance with all requirements of New York Public 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 his or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the Department's secure web site or on forms prescribed by the Department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the Department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to New York Public Health Law § 230, shall

constitute professional misconduct as defined in New York Education Law § 6530(21) and New York Education Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in New York Public Health Law § 230-a, including but not limited to: Revocation or Suspension of license, Censure and Reprimand, Probation, Public Service and/or Fines up to \$10,000 per specification of misconduct found.

That Respondent shall cooperate fully with the OPMC in its administration and enforcement of the 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 Agreement. Respondent shall meet with a person designated by the Director, 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 the 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 the Consent 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 the 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 or email transmission to me or my attorney, whichever is first. The Consent

Order, this Consent 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 of Health 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, administratively and/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, OPMC, and the Chair of the Board each retain complete discretion either to enter into the proposed Consent 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: Oct 10, 2013

REDACTED

JAMES HOYT KERN, M.D.  
Respondent

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

DATE: October 14, 2013

REDACTED

MICHAEL R. SHARP, Esq.  
Attorney for Respondent

DATE: October 15, 2013

REDACTED

MICHAEL G. BASS  
Assistant Counsel  
Bureau of Professional Medical Conduct

DATE: 10/21, 2013

REDACTED

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

## **EXHIBIT A**



IN THE MATTER  
OF  
JAMES HOYT KERN, M.D.  
CO-12-06-3180-A

---

STATEMENT  
OF  
CHARGES

**JAMES HOYT KERN, M.D.**, Respondent, was authorized to practice medicine in New York state on or about October 29, 1982, by the issuance of license number 152312 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about June 8, 2012, the Texas Medical Board (hereinafter "Texas Board") by AGREED ORDER (hereinafter "Texas Order"), ORDERED *inter alia*, that Respondent take and pass, with a score of 75 or above, the Medical Jurisprudence Examination ("JP Exam") given by the Texas Medical Board; Respondent complete 24 hours of continuing medical education; and that Respondent pay a \$5,000 fine. Respondent admitted that that he had not registered his office as providing office based anesthesia at Level II and above as required and that his written consent for a procedure was not as detailed as it should have been.

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

1. New York Education Law §6530(16) (a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine, namely, New York Public Health Law §230-d(2) and/or (3)) and/or;

2. New York Education Law §6530(16) (a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine, namely, New York Public Health Law §2805-d(1)).

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action 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 B.

DATED: *June 13*, 2013  
Albany, New York

REDACTED \_\_\_\_\_  
MICHAEL A. HISER  
Acting Deputy Counsel  
Bureau of Professional Medical Conduct