

April 9, 2014

CERTIFIED MAIL-RECEIPT REQUESTED

Richard A. Heiden, M.D.

REDACTED

Re: License #160241

Dear Dr. Heiden:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 14-86. This Order of Conditions pursuant to Public Health Law Section 230 is effective April 16, 2014.

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: Peter Chavkin, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
666 Third Avenue
New York, NY 10017

IN THE MATTER
OF
RICHARD A. HEIDEN, M.D.

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

Upon the application of RICHARD A. HEIDEN, 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: 4/8/2014

REDACTED

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

1

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

**IN THE MATTER
OF
RICHARD A. HEIDEN, M.D.**

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

RICHARD A. HEIDEN, M.D., represents that all of the following statements are true:

That on or about September 24, 1984, I was licensed to practice as a physician in the State of New York and issued License No. 160241 by the New York State Education Department.

My current address is: _____ REDACTED _____

and I will advise the Director of the Office of Professional Medical Conduct of any change of address. I am affiliated with the following hospitals and/or facilities:

- Coney Island Hospital
- MRI-CT Associates of Queens AKA Hygeia Diagnostic Imaging
- Nihon Medical Healthcare AKA Manhattan Wellness Medical Care, PLLC;
- Cwern-Hsu Medical, P.C.

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 and all assessments and evaluations to date, and upon my representation that I have practiced medicine without incident for at least two years 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.

I agree that the Order shall impose the following conditions:

That Licensee 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. Licensee 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 Order's effective date and shall continue at all times until the conclusion of the period of Practice Conditions, regardless of tolling; and

That Licensee 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 Licensee's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; all current and past affiliations and/or privileges with hospitals, institutions, facilities, medical practices, managed care organizations, and/or applications for such affiliations and/or privileges; all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Licensee shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.

That Licensee 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 Licensee's profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to Licensee's 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 Licensee remains a licensee in New York State.

Licensee's 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

That Licensee shall cooperate fully with the Office of Professional Medical Conduct ("OPMC") in its administration and enforcement of this Order and in its 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 upon the Order's effective date and shall continue while Licensee possesses a license; and

That for a period of three years from the Order's effective date, subject to the tolling provisions set forth below, Licensee shall be subject to additional conditions set forth as "Practice Conditions" enumerated in Exhibit "B", which is attached to and a part of this agreement.

I stipulate that my failure to comply with the conditions imposed by this order, if proven and found at a hearing pursuant to N. Y. Pub. Health Law § 230(10), shall constitute professional misconduct as defined in 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, and/or any unsatisfactory report by the practice monitor, 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

4/1/14

REDACTED

RICHARD A. HEIDEN, M.D.
LICENSEE

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

DATE: 4/2/14

REDACTED

PETER CHAVKIN, ESQ.
Attorney for Licensee

DATE: April 2, 2014

REDACTED

MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 4/7/14

REDACTED

Fi. KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "B"

PRACTICE CONDITIONS

- 1) 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.
- 2) Licensee shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Licensee shall ensure education, training and oversight of all office personnel involved in medical care with respect to these practices.
- 3) Licensee shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients.
- 4) The Director may review Licensee'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 or periodic visits with Licensee and staff at practice locations or OPMC offices.
- 5) Licensee shall provide access for DOH personnel to Licensee's office(s) to verify Licensee's compliance with this Order. This access shall include, but not be limited to, on-site inspections, observation and interviews.
- 6) At the direction of the Board, and within 90 days of the effective date of the Order, Licensee shall be enrolled in, and shall fully participate in, a course of personalized continuing medical education of no less than three months duration, to include an

assigned educational preceptor who is a physician board certified in diagnostic radiology, to be approved, in writing, by the Director of OPMC. The recommendations of any prior evaluation shall be the basis of Licensee's course of personalized continuing medical education.

- 7) Licensee shall comply with all requests for information and documentation by any evaluator, past, present, or future, related to its assessment of Licensee and/or its exercise of responsibilities pursuant to this Order. Licensee shall authorize any evaluator to provide the Director of OPMC with any Assessment Report, past, current, or future, and with all other information and documentation reviewed by such evaluator related to its assessment of, monitoring of, or educational plan for, Licensee.
- 8) Licensee shall cause the preceptor to:
 - a) Submit reports on a quarterly basis to OPMC certifying whether Licensee is fully participating in the personalized continuing medical education program.
 - b) Report immediately to the Director of OPMC if Licensee withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by Licensee.
 - c) At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by Licensee toward remediation of any identified deficiencies.

9) Licensee shall, for a period of three years commencing 30 days after the Order's effective date, practice medicine only when monitored by a licensed physician, board-certified in an appropriate specialty ("practice monitor"), proposed by Licensee and subject to the written approval of the Director.

a) Licensee shall make available to the practice monitor all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Licensee's medical practice at every location on a random unannounced basis at least monthly and shall examine a selection of records maintained by Licensee, including patient records, imaging studies and reports, prescribing information and office records, to determine whether the Licensee's medical practice is conducted in accordance with generally accepted standards of professional medical care. (The practice monitor shall examine no fewer than twenty records per month; the number of records to be reviewed and the focus of the record selection shall be determined on an ongoing basis by the practice monitor in consultation with, and at the direction of, the Physician Monitoring Program of OPMC, and shall include any areas identified in any evaluation of Licensee. The practice monitor shall report to OPMC within 24 hours of any perceived deviation by Licensee from accepted standards of medical care or any refusal by Licensee to cooperate with the monitoring.

- b) Licensee shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c) Licensee shall cause the practice monitor to report quarterly, in writing, to the Director. These narrative reports shall address all aspects of Licensee's clinical practice including, but not limited to, the evaluation and treatment of patients, the monitor's assessment of patient records selected for review, detailed case description of any case found to not meet the established standards of care and Licensee's remediation of any previously identified deficiency areas.
 - d) Licensee shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with N.Y. Pub. Health Law § 230(18)(b). Licensee shall provide the Director with proof of such coverage before Licensee may practice medicine after the effective date of this Order.
- 10) Licensee shall enroll in and complete a continuing education program in any and all areas specified by the Director of Professional Medical Conduct. This continuing education program is subject to the Director's prior written approval and shall be completed within the first 90 days of the period of Conditions.
- 11) The period of Practice Conditions shall toll when Licensee is not engaged in active medical practice in New York State for 30 consecutive days or more. Licensee shall notify the Director, in writing, if Licensee is not currently engaged in or intends to leave active medical practice in New York State for 30 consecutive days or more

and Licensee shall then notify the Director again at least 14 days before returning to active medical practice in New York State. Upon Licensee's return to active medical practice in New York State, the period of Practice Conditions shall resume and Licensee shall fulfill any unfulfilled 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.

- 12) 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.