



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

July 20, 2016

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

James Clarke, MD

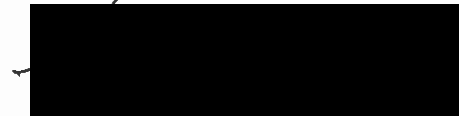

Re: License No. 166941

Dear Dr. Clarke:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 16-254. This order and any penalty provided therein goes into effect July 27, 2016.

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,



Henry Spector, M.D.
Acting Executive Secretary
Board for Professional Medical Conduct

Enclosure

IN THE MATTER
OF
JAMES CLARKE, M.D.

Upon the proposed Application for a Modification Order of, JAMES CLARKE, M.D.

(Respondent), which is made a part of this Modification Order, it is agreed to and

ORDERED, that the attached Application, and its terms, are adopted and SO
ORDERED, and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board,
either

- by mailing of a copy of this Modification Order, either by first class to Respondent at the address in the attached Application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 7/19/2016


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

**IN THE MATTER
OF
JAMES CLARKE, M.D.**

**MODIFICATION
AGREEMENT
AND
ORDER**

JAMES CLARKE, M.D., represents that all of the following statements are true:

That on or about July 11, 1986, I was licensed to practice as a physician in the State of New York, and issued License No. 166941 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 currently subject to BPMC Order # BPMC 16-102 (Attachment I) (henceforth "Original Order"), which was issued upon an Application For Consent Order signed by me on March 11, 2016, (henceforth Original Application"), adopted by the Original Order. I hereby apply to the State Board for Professional Medical Conduct for an Order (henceforth "Modification Order"), modifying the Original Order, as follows: to delete the paragraphs in the Original Order that state:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.

Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of five thousand dollars (\$5,000.00), to be paid in full

within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 2784
Empire State Plaza
Albany, New York 12237

In making such payment, Respondent shall indicate the order number of this Order both on the payment check submitted and on the cover letter accompanying payment. Additionally, Respondent shall simultaneously mail a photocopy of the check and cover letter to:

Physician Monitoring Program
Office of Professional Medical Conduct
Riverview Center
150 Broadway, Suite 355
Albany, New York 12204-2719.

Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of five (5) years, subject to the terms set forth in attached Exhibit "B," which Terms include that my practice of medicine be monitored for a period of five (5) years after the effective date of the Order.

Pursuant to N.Y. Pub. Health Law § 230-a(3), my license to practice medicine in New York State shall be limited to preclude prescribing to family members.

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

That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a.

Respondent shall comply fully with the Final Decision and Order of the Maryland State Board of Physicians dated March 3, 2015, and any extension or modification thereof.

Respondent shall provide a written authorization for the Maryland State Board of Physicians 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 Maryland Order.

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

That Respondent 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; and

That Respondent 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 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 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 Respondent 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 Respondent's 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. Respondent 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 Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; 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.

and substituting for the above paragraphs:

I ask the Board to accept my Surrender of License, and I agree to be bound by all of the terms set forth in attached Exhibit "B".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged; this application 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 Public Health Law.

I agree that, if the Board accepts my Surrender of License, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender 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(s). OPMC shall report this action to the National Practitioner Data Bank, the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I ask the Board to accept this Surrender of License, which I submit 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 Surrender of License, 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 Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

All remaining Terms and Conditions will continue as written in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance by the Board of this Application, I knowingly waive my right to contest the Original Order or the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Department, 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 7/8/16



JAMES CLARKE, M.D.
RESPONDENT

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

DATE: 7/11/16



PAUL TSUI
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 7/11/16



KEITH W. SERVIS
Director
Office of Professional Medical Conduct

ATTACHMENT I



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 22, 2016

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

James D. Clarke, M.D.


RE: License No. 166941

Dear Dr. Clarke:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 16-102. This Order and any penalty provided therein goes into effect March 29, 2016.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 2784
Empire State Plaza
Albany, New York 12237

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,


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

cc: Anne-Jo Pennock McTague, RN, Esq.
Maynard O'Connor Smith & Catalinotto, LLP
6 Tower Place
Albany, New York 12203

Enclosure

IN THE MATTER
OF
JAMES CLARKE, M.D.

CONSENT
ORDER

Upon the application of JAMES CLARKE, 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.

DATE: 3/18/2015


ARTHUR S. HENGERER, 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
JAMES CLARKE, M.D.

CONSENT
AGREEMENT

JAMES CLARKE, M.D., represents that all of the following statements are true:

That on or about July 11, 1986, I was licensed to practice as a physician in the State of New York, and issued License No. 166941 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 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.

I do not contest the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.

Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of five thousand dollars (\$5,000.00), to be paid in full within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 2784
Empire State Plaza
Albany, New York 12237

In making such payment, Respondent shall indicate the order number of this Order both on the payment check submitted and on the cover letter accompanying payment. Additionally, Respondent shall simultaneously mail a photocopy of the check and cover letter to:

Physician Monitoring Program
Office of Professional Medical Conduct
Riverview Center
150 Broadway, Suite 355
Albany, New York 12204-2719.

Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of five (5) years, subject to the terms set forth in attached Exhibit "B," which Terms include that my practice of medicine be monitored for a period of five (5) years after the effective date of the Order.

Pursuant to N.Y. Pub. Health Law § 230-a(3), my license to practice medicine in New York State shall be limited to preclude prescribing to family members.

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

That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a.

Respondent shall comply fully with the Final Decision and Order of the Maryland State Board of Physicians dated March 3, 2015, and any extension or modification thereof.

Respondent shall provide a written authorization for the Maryland State Board of Physicians 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 Maryland Order.

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

That Respondent 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; and

That Respondent 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 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 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 Respondent 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 Respondent's 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. Respondent 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 Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; 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 N.Y. Educ. 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 the N.Y. Pub. 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. 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.

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.

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.

DATE

3/11/2016


JAMES D. CLARKE, M.D.
RESPONDENT

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

DATE: 3/13/2016


ANNE-JO PENNOCK McTAGUE, R.N., ESQ.
Attorney for Respondent

DATE: 3/14/16


PAUL TSUI
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 3/15/16



KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

IN THE MATTER
OF
JAMES D. CLARKE, M.D.
CO-15-04-1945A

STATEMENT
OF
CHARGES

JAMES D. CLARKE, M.D., Respondent, was authorized to practice medicine in New York State on July 11, 1986, by the issuance of license number 166941 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 3, 2015, the Maryland State Board of Physicians (hereinafter "Maryland Board"), by a Final Order (hereinafter "Maryland Order"), found Respondent guilty of unprofessional conduct in the practice of medicine in violation of §14-404(a)(3)(ii) of the Maryland Medical Practice Act, Maryland Code Annotated, Health Occupations Article based upon Respondent making inappropriate sexual comments to and improperly touching his employees. It was also based on medical treatment that Respondent provided to three family members between 2006 and 2011, including the prescription of controlled substances beyond his practice and expertise of cardiology and his failure to document any progress notes for two of the family members and one note of an "Initial office consultation" for the third family member written years after treatment began. The Maryland Board reprimanded Respondent and ordered that Respondent be placed on probation for a minimum period of two years subject to terms and conditions including payment of a \$10,000.00 fine, enrollment in the Maryland Professional Rehabilitation Program ("MPRP"), and enrollment in and attendance at a Board-approved one-on-one tutorial that focuses on boundaries in the workplace.

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

1. New York Education Law §6530(20) (Conduct in the practice of medicine which evidences moral unfitness to practice medicine); and/or

2. New York Education Law §6530(2) (Practicing the profession fraudulently or beyond its authorized scope); and/or

3. New York Education Law §6530(3) (Practicing the profession with negligence on more than one occasion); and/or

4. New York Education Law §6530(32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) 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 B and B1, B and B2, B and B3, and/or B and B4.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action involving taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action involving his license to practice medicine would, if committed in New York State, constitute professional misconduct under the laws New York State, in that Petitioner charges:

2. The facts in Paragraphs A and B and B1, B and B2, B and B3, and/or B and B4.

DATED: *FEB. 1*, 2016
Albany, New York


MICHAEL A. HISER
Deputy Counsel
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 a continuing education program including, but not limited to, ethics, prescribing of controlled substances, and medical record keeping. This continuing education program is subject to the Director of OPMC's prior written approval and shall be successfully completed within the first 90 days of the probation period.
- 9) Respondent shall remain free from alcohol and all other mood altering substances other than those prescribed for Respondent 's treatment by a licensed health care professional aware of Respondent 's history of chemical dependency and/or mental illness. Respondent shall not self-prescribe any medications.
- 10) Respondent shall remain active in self-help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.
- 11) Respondent shall notify all treating physicians of Respondent's history of substance abuse. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating health care professionals.
- 12) Beginning 30 days after the effective date of the Consent Order's, Respondent shall not be permitted to practice medicine except when monitored by qualified health care professional monitors: a Sobriety Monitor, a Practice Supervisor, and a Therapist, proposed by Respondent and approved, in writing, by the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine,

Within 7 days of learning an approved monitor is no longer willing or able to serve, Respondent shall submit the name of a proposed successor to the Director of OPMC. Monitors shall not be family members or personal friends or be in professional relationships that would pose a conflict with monitoring responsibilities. All monitors shall execute acknowledgment forms provided by OPMC certifying familiarity with Respondent's history of substance abuse, with this Order and its terms, and acknowledging a willingness to comply with the monitor's reporting responsibilities regarding Respondent's compliance with the terms of this Order.

- a) Respondent shall ensure that the monitors are familiar with Respondent's history of substance abuse and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.

- b) Respondent shall submit to random, unannounced observed blood, breath and/or urine screens for the presence of drugs and alcohol (hereafter "drug screen"), when requested by a monitor. The monitoring shall be on a random, unannounced, directly-observed, 7-day-a-week, 24-hour-a-day basis. Respondent shall report for a drug screen within 4 hours of being contacted by a monitor. Monitors shall report to OPMC immediately if Respondent refuses or delays a test or if a test is positive for alcohol, or any other unauthorized drug or substance. Respondent shall avoid all substances that may cause positive urine drug screens, such as poppy seeds, mouthwash or cough medicine. Any positive test result shall constitute a violation of the terms of this Order.
- c) Respondent shall meet regularly with a Sobriety Monitor. During the first 12 months of monitoring, Respondent shall cause the Sobriety Monitor to obtain drug screens at a frequency of no less than 6 times per month. If Respondent is compliant throughout the first 12-month period, subsequent drug screens shall be obtained at a frequency to be proposed by the Sobriety Monitor and approved by OPMC. Respondent shall cause the Sobriety Monitor to submit quarterly reports to OPMC certifying Respondent's sobriety or lack of sobriety. These reports are to include forensically valid results of all drug screens performed and an assessment of self-help group (e.g., AA/NA/Caduceus) attendance and 12-step progress.
- d) Respondent shall practice only when supervised in medical practice by a licensed physician (hereafter "Practice Supervisor"). The Practice Supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC, and shall be in a position to regularly observe and assess Respondent's medical practice. The Practice Supervisor shall oversee Respondent's compliance with the terms of practice imposed by the Order and Respondent's prescribing, administering, dispensing, inventorying, wasting and disposal of controlled substances. Respondent shall cause the Practice Supervisor to report to OPMC immediately any suspected impairment, inappropriate behavior, questionable medical practice, possible misconduct, or violation by Respondent of any of the terms of this Order. Respondent shall cause the Practice Supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice and prescribing practices, any unexplained absences from work, and certifying Respondent's compliance or detailing Respondent's failure to comply with each term imposed.
- e) Respondent shall engage and continue in therapy with a treating health care professional (hereafter "Therapist"). Respondent shall cause the Therapist to submit a proposed treatment plan and quarterly reports to

OPMC certifying whether Respondent is in compliance with the treatment plan. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Therapist. Respondent shall cause the Therapist to report to OPMC immediately if Respondent leaves treatment against medical advice or displays any symptoms of a suspected or actual relapse. Respondent shall cause the Therapist to notify OPMC, in writing, of any termination of treatment approved by the Therapist, no less than 30 days prior to such termination.

- 13) At the direction of the Director of OPMC, Respondent shall submit to evaluations by a board-certified psychiatrist, licensed mental health practitioner or other health care professional or program designated by the Director (hereafter "Evaluator.") Respondent shall provide the Evaluator with a copy of this Order and copies of all previous treatment records. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Evaluator. The Evaluator shall report to the Director regarding Respondent's condition and fitness or incapacity to practice medicine. Respondent shall comply with all treatment recommendations based upon the evaluation; failure to comply with such treatment recommendations shall constitute professional misconduct.
- 14) Respondent shall enroll, or continue enrollment, in the Committee for Physician Health (CPH) and shall engage in a contract with CPH that defines the terms, conditions and duration of Respondent's recovery program. Respondent shall comply with the contract. Respondent shall give written authorization for CPH to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract and with this Order, including full access to all records maintained by CPH with respect to Respondent.
 - a) Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's impairment is not substantially alleviated by treatment.
 - b) Respondent shall cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.
- 15) 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.

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 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, 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 the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, 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.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, 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.
6. Within 15 days of the Order's effective date, 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. Licensee shall destroy all prescription pads bearing Licensee's name. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, 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.
8. 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 the Order's effective date.
9. 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. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law §

230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.