



Department
of Health

Public

ANDREW M. CUOMO
Governor

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

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

June 24, 2015

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Thomas F. Mydosh, M.D.



Re: License No. 173340

Dear Dr. Mydosh:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 15-160. This order and any penalty provided therein goes into effect July 1, 2015.

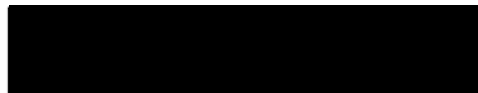
If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: c/o Physician Monitoring Unit, NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719.

If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. Our office is unable to store framed licenses.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719, telephone # (518)402-0855.

Sincerely,



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

cc: Richard H. Holtzberg, Esq.
Holtzberg Law Firm
2526 Browncroft Boulevard
Rochester, NY 14625

Enclosure

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

**IN THE MATTER
OF
THOMAS F. MYDOSH, M.D.**

CONSENT
ORDER

Upon the application of (Respondent) THOMAS F. MYDOSH, M.D. 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

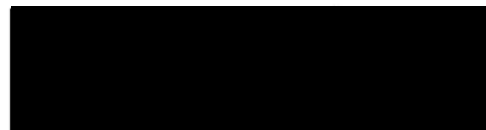
ORDERED, that this Consent Order shall be effective upon issuance by the Board, either

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: 6/23/2015



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
THOMAS F. MYDOSH, M.D.**

CONSENT
AGREEMENT

THOMAS F. MYDOSH, M.D., represents that all of the following statements are true:

That on or about December 31, 1987, I was licensed to practice as a physician in the State of New York, and issued License No. 173340 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 admit guilt to the first specification in full satisfaction of the charges against me, and agree to the following penalty:

My license shall be suspended for an indefinite period but no less than 12 months. I shall be subject to a condition that I comply with attached Exhibit "C" ("Requirements for Closing a Medical Practice Following Medical License Revocation, Surrender, Limitation or

Suspension." During the period of suspension, I shall be precluded from reliance upon my license to practice medicine to exempt me from the license, 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. Upon compliance with all the conditions of this Consent Order, but no sooner than 12 months from the effective date of this Consent Order, I may petition the Board for a Modification Order staying the indefinite suspension of my license.

I understand and agree:

That any Modification Order the Board may issue, in the exercise of its reasonable discretion, may include terms of probation, and/or further conditions on my practice.

That the Board will exercise its reasonable discretion upon my petition for a modification Order through a Committee on Professional Conduct after a proceeding in which I have met a burden of proof and persuasion, as further set forth in attached Exhibit "B";

That the Committee's exercise of discretion shall not be reviewable by the Administrative Review Board; and

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

- 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 OPMC in its administration and enforcement of this Consent Order and in its investigation of all matters concerning Respondent. Respondent shall respond promptly to all OPMC requests for written periodic verification of Respondent's compliance with the terms of this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, and shall promptly provide OPMC with 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).

If I am charged with professional misconduct in future, I hereby stipulate and agree that this Application and Consent Order, and/or related Modification Orders, shall be admitted into evidence in that proceeding as part of the Department's case-in-chief, at the sole discretion of the Department.

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 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 this Consent Order shall take effect upon 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. This 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'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 for Professional Medical Conduct and the Office of Professional Medical Conduct 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 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 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 6-18-2015


THOMAS F. MYDOSZ, M.D.
RESPONDENT

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

DATE: 6/18/15



~~RICHARD H. HOLTZBERG, ESQ.~~
Attorney for Respondent

DATE: 6-19-15



LEE A. DAVIS
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 6/19/15



KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

IN THE MATTER
OF
THOMAS F. MYDOSCH, M.D.

STATEMENT
OF
CHARGES

THOMAS F. MYDOSCH, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 31, 1987, by the issuance of license number 173340 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (Patients are identified by name in Appendix A) from on or about September 28, 2007 until Respondent discontinued his medical practice without notice to Patient A on or about July 1, 2013. Respondent treated Patient A for a variety of health issues, including hypothyroidism, hypercholesterolemia and iron deficiency. Respondent's treatment of Patient A deviated from accepted standards of medical care as follows:

1. Respondent abruptly stopped seeing patients at his medical practice in late June/early July 2013. Respondent failed to make reasonable arrangements for the continuation of medical care to Patient A who was, at the time Respondent stopped seeing patients, under and in need of immediate medical care, including:
 - a. The ordering of medication(s) necessary to treat Patient A's hypothyroidism; and/or
 - b. The ordering of medication(s) necessary to treat Patient A's hypercholesterolemia.

2. Respondent failed to forward Patient A's medical records to her new medical provider despite many requests and/or attempts to have Patient A's records forwarded.

B. Respondent provided medical care to Patient B from on or about September 27, 2007 until Respondent discontinued his medical practice without notice to Patient B on or about July 1, 2013. Respondent treated Patient B for a variety of health issues, including coronary artery disease, hypercholesterolemia, hypertension, non-insulin-dependent diabetes mellitus and Vitamin D deficiency. Respondent's treatment of Patient B deviated from accepted standards of medical care as follows:

1. Respondent abruptly stopped seeing patients at his medical practice in late June/early July 2013. Respondent failed to make reasonable arrangements for the continuation of medical care to Patient B who was, at the time Respondent stopped seeing patients, under and in need of immediate medical care, including:
 - a. The ordering of medication(s) necessary to treat Patient B's hypertension;
 - b. The ordering of medication(s) necessary to treat Patient B's diabetes; and/or
 - c. The ordering of medication(s) necessary to treat Patient B's Hypercholesterolemia.
2. Respondent failed to forward Patient B's medical records to his new medical provider despite many requests and/or attempts to have Patient B's records forwarded.

C. Respondent provided medical care to Patient C from on or about October 6, 2010 until Respondent discontinued his medical practice without notice to Patient C on or about July 9, 2013. Respondent treated Patient C for a variety of health issues, including chronic kidney disease, proteinuria, hypercholesterolemia, hypertension and Vitamin D deficiency. Respondent's treatment of Patient C deviated from accepted standards of medical care as follows:

1. Respondent abruptly stopped seeing patients at his medical practice in late June/early July 2013. Respondent failed to make reasonable arrangements for the continuation of medical care to Patient C who was, at the time Respondent stopped seeing patients, under and in need of immediate medical care, including:
 - a. The ordering of medication(s) necessary to treat Patient C's hypertension;
 - b. The ordering of medication(s) necessary to treat Patient C's hypercholesterolemia; and/or
 - c. The reading of Patient C's comprehensive blood work obtained on approximately July 1, 2013 and the adjusting of medications in response to the blood work ordered by Respondent.
2. Respondent failed to forward Patient C's medical records to his new medical provider despite many requests and/or attempts to have Patient C's records forwarded.

D. Respondent provided medical care to Patient D from on or about June 13, 2007 until Respondent discontinued his medical practice without notice to Patient D on or about late June/early July, 2013. Respondent treated Patient D for a variety of health issues, including chronic renal insufficiency, GERD, depression, hypercholesterolemia, hypertension hypothyroidism and osteopenia. Respondent's treatment of Patient D deviated from accepted standards of medical care as follows:

1. Respondent failed to forward Patient D's medical records to his new medical provider despite many requests and/or attempts to have Patient D's records forwarded.

E. Respondent provided medical care to Patient E from on or about June 15, 2007 until Respondent discontinued his medical practice without notice to Patient E on or about late June/early July, 2013. Respondent treated Patient E for a variety of health issues, including abdominal aortic aneurysm, renal insufficiency hypertension and

hyperthyroidism. Respondent's treatment of Patient E deviated from accepted standards of medical care as follows:

1. Respondent failed to forward Patient E's medical records to his new medical provider despite many requests and/or attempts to have Patient E's records forwarded.

F. Respondent provided medical care to Patient F from on or about January 12, 2007 until Respondent discontinued his medical practice without notice to Patient F on or about late June/early July, 2013. Respondent treated Patient F for a variety of health issues, including hypertension, hypercholesterolemia, asthma, anxiety and depression. Respondent's treatment of Patient F deviated from accepted standards of medical care as follows:

1. Respondent failed to provide Patient F's medical records for the purpose of obtaining a life insurance policy, despite many requests, thereby denying Patient F an opportunity to obtain affordable life insurance policy.
2. Respondent abruptly stopped seeing patients at his medical practice in late June/early July 2013. Respondent failed to make reasonable arrangements for the continuation of medical care to Patient F who was, at the time Respondent stopped seeing patients, under and in need of immediate medical care, including:
 - a. The ordering of medication(s) necessary to treat Patient F's hypertension;
 - b. The ordering of medication(s) necessary to treat Patient F's asthma;
 - c. The ordering of medication(s) necessary to treat Patient F's anxiety;
 - d. The ordering of medication(s) necessary to treat Patient F's depression;and/or
 - e. The ordering of medication(s) necessary to treat Patient F's hypercholesterolemia.
3. Respondent failed to forward Patient F's medical records to his new medical provider despite many Requests and/or attempts to have Patient F's records forwarded.

G. Respondent provided medical care to Patient G from on or about June 29, 2007 until Respondent discontinued his medical practice without notice to Patient G on or about late June 24, 2013. Respondent treated Patient G for a variety of health issues, including hypertension, hypercholesterolemia, coronary artery disease and bradycardia. Respondent's treatment of Patient G deviated from accepted standards of medical care as follows:

1. Respondent failed to provide Patient G's medical records for the purpose of obtaining a life insurance policy, despite many requests, thereby denying Patient G an opportunity to obtain affordable life insurance policy.
2. Respondent failed to forward Patient G's medical records to his new medical provider despite many requests and/or attempts to have Patient G's records forwarded.

H. Respondent provided medical care to Patient H from on or about September 25, 2012 until Respondent discontinued his medical practice without notice to Patient H on or about late June/early July, 2013. Respondent treated Patient H for a variety of health issues, including depression, obsessive-compulsive disorder (OCD) and GERD. Respondent's treatment of Patient H deviated from accepted standards of medical care as follows:

1. Respondent abruptly stopped seeing patients at his medical practice on or about June 24, 2013 when Patient H arrived at Respondent's office for a scheduled follow-up medical appointment, only to find that Respondent's office was closed, without any prior notice to Patient H. Respondent failed to make reasonable arrangements for the continuation of medical care to Patient H who was, at the time Respondent stopped seeing patients, under and in need of immediate medical care, including:
 - a. The ordering of the medication Concerta, necessary to treat Patient H's OCD, and which had been initiated by Respondent one month previously, and for which Respondent scheduled the follow-up examination on June 24, 2013 when Patient H arrived to find Respondent's office closed;

- b. The ordering of medication(s) necessary to treat Patient H's GERD; and/or
 - c. The ordering of medication(s) necessary to treat Patient H's depression.
2. Respondent failed to forward Patient H's medical records to his new medical provider despite many requests and/or attempts to have Patient H's records forwarded.

SPECIFICATION OF CHARGES

FIRST THROUGH EIGHTH SPECIFICATIONS

ABANDONING OR NEGLECTING A PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(30) by abandoning or neglecting a patient under and in need of immediate professional care, as alleged in the facts of:

1. Paragraphs A and A.1 (a), and/or A and A.1 (b), and/or A and A.2.
2. Paragraphs B and B.1 (a), and/or B and B.1 (b), and/or B and B.1 (c), and/or B and B.2.
3. Paragraphs C and C.1 (a), and/or C and C.1 (b), and/or C and C. 1 (c), and/or C and C.2.
4. Paragraphs D and D.1.
5. Paragraphs E and E.1.

6. Paragraphs F and F.1, and/or F and F.2 (a), and/or F and F.2 (b) and/or F and F.2 (c), and/or F and F. (d), and/or F and F.2 (e), and/or F and F.3.
7. Paragraphs G and G.1, and/or G and G.2.
8. Paragraphs H and H.1 (a), and/or H and H.1 (b), and/or H and H.1 (c) and/or H and H.2.

NINTH THROUGH SIXTEENTH SPECIFICATIONS

FAILURE TO MAKE RECORDS AVAILABLE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (16) by failing to comply with substantial provisions of state law, to wit, Public Health Law §§ 17 and 18 by failing to make available to a patient medical records of patients following the lawful request for said medical records in the possession or under the control of Respondent as alleged in the facts of:

9. Paragraphs A and A.2, and/or
10. Paragraphs B and B.2, and/or
11. Paragraphs C and C.2, and/or
12. Paragraphs D and D.1, and/or
13. Paragraphs E and E.1, and/or
14. Paragraphs F and F.1, and/or F and F.3, and/or
15. Paragraphs G and G.1, and/or G and G.2, and/or
16. Paragraphs H and H.2, and/or

SEVENTEENTH 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:

17. Paragraphs A and A.1 (a), A and A.1 (b), A and A.2, B and B.1 (a), B and B.1 (b), B and B.1 (c), B and B.2, C and C.1 (a), C and C.1 (b), C and C.1 (c), C and C.2, D and D.1, E and E.1, F and F. 1, F and F.2 (a), F and F.2 (b), F and F.2 (c), F and F.2 (d), F and F.2(e), F and F.3, G and G.1, G and G.2, H and H.1 (a), H and H.1 (b), H and H.1 (c), and/or H and H.2.

DATE: ~~March~~ ^{June 19,} 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

- 1) The suspension of Respondent's license shall be terminated only after Respondent makes a showing to the satisfaction of a Committee on Professional Conduct (Committee) of the State Board for Professional Medical Conduct (Board) that Respondent has successfully complied with or successfully completed a course of therapy and ongoing evaluation and is no longer incapacitated for the practice as a physician, and a Committee makes a determination that Respondent is both fit and clinically competent to practice as a physician. Respondent shall provide the Office of Professional Medical Conduct (OPMC) with a proposed treatment plan for advice as to whether it is generally appropriate; however, the determination of successful compliance with or completion of a course of therapy, and the determination that Respondent is no longer incapacitated for the active practice as a physician, shall be made solely by the Committee.

- 2) After Respondent completes at least 12 months of suspension pursuant to the terms of this Consent Order, and upon Respondent's request, a Committee shall be convened to hear and evaluate Respondent's showing, as set forth in paragraph 1 above. The Board will make reasonable attempts to convene a Committee within 90 days of Respondent's request; however, Respondent's request shall not be perfected until the Director of OPMC receives all the required documentation, and complies with all the Conditions, set forth in paragraph 3 below. The Board shall determine the procedural nature of the proceeding through the exercise of the Director of OPMC's reasonable discretion upon consultation with Counsel, Bureau of Professional Medical Conduct (Counsel). Proceedings before a Committee shall not be in the nature of a hearing pursuant to N. Y. Pub. Health Law § 230, but shall instead be informal and intended only to address any facts, evidence, information, circumstances, or issues relating to the advisability of terminating Respondent's license suspension. The Committee shall be given access to evidence including, but not limited to:
 - a) Any evidence pertaining to Respondent's compliance with the conditions imposed.
 - b) Any evidence that the Director or Counsel deems appropriate.

- 3) Upon requesting that a Committee be convened, pursuant to paragraph 2, Respondent shall provide the Director of OPMC with the following:
 - a) The signed acknowledgment and curriculum vitae from the proposed sobriety monitor referred to in paragraph 5c.

- b) The signed acknowledgment and curriculum vitae from the proposed supervising physician referred to in paragraph 5d.
- c) The signed acknowledgment and curriculum vitae from the proposed health care professional referred to in paragraph 5e.
- d) Certified true and complete copies of all evaluation and treatment records relating to Respondent's substance abuse/dependence, psychological, psychiatric and/or mental health treatment, whether in an in-patient, out-patient, after-care or consultation setting; the certified records shall be forwarded directly to OPMC by the treatment providers, facilities and evaluators. The records shall reflect all treatment and evaluation provided, and shall include the results of all tests conducted to evaluate Respondent's fitness and clinical competence to practice medicine, whether the treatment, evaluation and testing occurred before, or while, the suspension was in effect.
- e) Documentation of Respondent's participation in the program(s) of the Committee for Physicians' Health of the Medical Society of the State of New York or other equivalent program(s). Documentation shall include but not be limited to verification of compliance and results of forensically valid alcohol/drug screening.
- f) Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records; these waivers shall comply with the requirements of federal confidentiality laws and regulations, including but not limited to: HIPAA, Public Law 104-191, et seq., and the laws governing confidentiality of substance abuse records, at 42 U.S.C. § § 290dd-3 and ee-3 and 42 C.F.R, Part 2.
- g) A current, independent, in-depth chemical dependency and psychiatric evaluation by a board-certified psychiatrist specializing in addiction medicine.
- h) Upon request of the Director of OPMC, Respondent shall attend, participate in and cooperate with an interview with designated personnel from the OPMC.

Provision of the documents listed in this paragraph shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

- 4) At least 14 days before the scheduled date of the proceeding referred to in paragraph 2, Respondent shall provide OPMC with the following:

- a) Certified true and complete copies of records updating treatment and alcohol/drug screening since the date of the original submissions referred to in paragraph 3d.
- b) Evidence that Respondent has maintained adequate knowledge and competence to practice as a physician; this evidence shall include documentation of continuing medical education and, at the Director of OPMC's request, a report of an independent evaluation of Respondent's medical knowledge and competence.

Submission of the evidence listed in this paragraph shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

- 5) If the Chair of the Committee issues an Order finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice medicine, and therefore terminates the suspension of Respondent's license, the Order shall further impose a period of probation, pursuant to N.Y. Pub. Health Law § 230-a, during which Respondent's practice as a physician shall be subject to conditions imposed for a period of no less than five years. The minimum conditions shall include the following:
 - a) Respondent shall be required to comply with the terms of a continuing after-care treatment plan addressing the major problems associated with Respondent's illness.
 - b) At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board-certified psychiatrist or other licensed mental health practitioner designated by the Director. This practitioner shall report to the Director regarding Respondent's condition and Respondent's fitness or incapacity to practice as a physician.
 - c) Respondent's sobriety will be monitored by a health care professional proposed by Respondent and approved, in writing, by the Director of OPMC ("sobriety monitor"). The sobriety monitor shall not be a personal friend. The sobriety monitor shall be familiar with Respondent's history of chemical dependence, with this suspension and with the terms of probation to be set forth. The sobriety monitor shall acknowledge willingness to comply with the monitoring terms by executing the acknowledgment provided by OPMC.
 - i) 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 mental illness. Respondent shall not self-prescribe any medications.

- ii) The sobriety monitor shall see Respondent at least twice during each month.
 - iii) The sobriety monitor shall direct Respondent to submit to unannounced tests of Respondent's blood, breath and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time a test is positive or is refused by Respondent. Respondent shall avoid all substances that may cause positive urine drug screens such as poppy seeds, mouthwash, cough medicine, etc. Any positive result shall be considered a violation of probation.
 - iv) The sobriety monitor shall report to OPMC any non-compliance with the imposed conditions.
 - v) Respondent shall ensure that the sobriety monitor submits quarterly reports to OPMC certifying Respondent's compliance, or detailing Respondent's failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
- d) Respondent's medical practice shall be supervised by a licensed physician ("practice supervisor") proposed by Respondent and approved, in writing, by the Director of OPMC. The supervising physician shall be familiar with Respondent's history of impairment and with the Order and its conditions. The supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. The supervising physician shall be in a position to regularly observe and assess Respondent's medical practice. The supervising physician shall oversee Respondent's prescribing, administering, dispensing, inventorying and wasting of controlled substances. The supervising physician shall acknowledge willingness to comply with the supervision terms by executing the acknowledgment provided by OPMC.
- i) Respondent shall ensure that the supervising physician submits quarterly reports to OPMC regarding the quality of Respondent's medical practice, any unexplained absences from work and certifying Respondent's compliance with each condition imposed, or detailing Respondent's failure to comply.

- ii) The supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.
 - e) Respondent shall continue in treatment with a health care professional or program ("health care professional") proposed by Respondent and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
 - i) Respondent shall ensure that the health care professional submits quarterly reports to OPMC certifying that Respondent is in compliance with treatment, or detailing Respondent's failure to comply.
 - ii) The health care professional shall report to OPMC immediately if Respondent is non-compliant with the treatment plan or demonstrates any significant pattern of absences.
 - iii) The health care professional shall acknowledge willingness to comply with the reporting requirements with respect to treatment by executing the acknowledgment provided by OPMC.
 - f) Licensee shall provide the Director of OPMC with, and ensure to keep current and effective, fully executed waivers of patient confidentiality concerning any prior or prospective evaluation and treatment records; these waivers shall comply with the requirements of federal confidentiality laws and regulations, including but not limited to: HIPAA, Public Law 104-191, et seq., and the laws governing confidentiality of substance abuse records, at 42 U.S.C. § § 290dd-3 and ee-3 and 42 C.F.R, Part 2.
- 6) The terms set forth in paragraph 5 are the minimum probation terms related to fitness to practice to be imposed on Respondent upon the termination of Respondent's license suspension, and other terms may be added by the Committee. All compliance costs shall be Respondent's responsibility. Respondent's failure to comply with any condition imposed at the time of suspension termination may result in disciplinary action against Respondent with charges of professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law § 6530(29).
- 7) If a Committee denies a petition by Respondent for license suspension termination, Respondent shall be barred from requesting that a Committee be convened to hear a petition for license suspension termination for 9 months from the date of the denial.

- 8) In addition to the terms set out in paragraph 5, and any other terms added by the Committee, upon the termination of Respondent's license suspension, Respondent shall also be subject to the following standard terms of probation:
- a) Respondent's conduct shall conform to moral and professional standards of conduct and governing law.
 - b) Any civil penalty not paid by Respondent by the prescribed date shall subject Respondent to all legal provisions pertaining to debt collection, including the imposition of interest, late payment charges and collection fees, referral of the debt to the New York State Department of Taxation and Finance for collection, and the non-renewal of permits or licenses. [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
 - c) 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.
 - d) Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to a review of office records, patient records, hospital charts, and/or electronic records, as well as interviews and/or periodic visits with Respondent and staff at practice locations or OPMC offices.
 - e) 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.
 - f) Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by state rules and regulations regarding controlled substances.

- g) Respondent shall comply with this Consent Order and all its terms, conditions, restrictions, limitations and penalties and shall be responsible for all associated compliance costs. Upon receiving evidence of non-compliance with the Consent Order, or any violation of its terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against Respondent authorized by law.

EXHIBIT "C"

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.

EXHIBIT "C"

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. 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.