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NEW YORK
state department of
HEALTH

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

May 8, 2014

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Kimberly L. Gibson-Berry, M.D.
REDACTED

Re: License No. 228697

Dear Dr. Gibson-Berry:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 14-117. This order and any penalty provided therein goes into effect May 15, 2014.

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,

REDACTED

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

cc: Jeanne M. Vinal, Esq.
Vinal and Vinal, P.C.
193 Delaware Avenue
Buffalo, NY 14202

Enclosure

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

BPMC No. 14-117

IN THE MATTER OF KIMBERLY L. GIBSON-BERRY, M.D.	CONSENT ORDER

Upon the application of (Respondent) KIMBERLY L. GIBSON-BERRY, 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: 5/7/2014

REDACTED

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 KIMBERLY L. GIBSON-BERRY, M.D.	CONSENT AGREEMENT

KIMBERLY L. GIBSON-BERRY, M.D., represents that all of the following statements are true:

That on or about June 9, 2003, I was licensed to practice as a physician in the State of New York, and issued License No. 228697 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 thirty-second 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 4/30/14

REDACTED

KIMBERLY L. GIBSON-BERRY, M.D.
RESPONDENT

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

DATE: 4/30/14

REDACTED

JEANNE M. VINAL, ESQ.
Attorney for Respondent

DATE: 4-30-14

REDACTED

LEE A. DAVIS
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 5/6/14

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER OF KIMBERLY L. GIBSON-BERRY, M.D.	STATEMENT OF CHARGES

KIMBERLY GIBSON-BERRY, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 9, 2003, by the issuance of license number 228697 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 July 7, 2008 through on or about January 23, 2012, for a variety of health issues, including insulin dependent diabetes, hypertension, hyperlipidemia, lower extremity edema, obstructive sleep apnea, GERD and obesity. Respondent's treatment of Patient A deviated from accepted standards of medical care as follows:

1. Respondent failed to perform an adequate medical evaluation in response to Patient A's numerous cardiac risk factors and complaints of dyspnea on exertion, reported to Respondent on or about August 10, 2010, and/or shortness of breath reported to Respondent on or about July 25, 2011, and/or Respondent failed to document the performance of an adequate medical evaluation.
2. Respondent abruptly stopped seeing patients at her medical practice in Mt. Morris, New York in late March/early April 2012. 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 insulin and its delivery mechanism supplies, to treat Patient A's diabetes and/or

b. The ordering of medication(s) necessary to treat Patient A's hypertension, and/or

c. The ordering of medication(s) necessary to treat Patient A's hyperlipidemia, and/or

d. The ordering of medication(s) necessary to treat Patient A's depression, and/or

e. The ordering of medication(s) necessary to treat Patient A's peripheral neuropathy.

3. Respondent failed to forward Patient A's medical records to his new medical provider in or about April 2012 despite attempts to have Patient A's records forwarded.

4. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient A.

B. Respondent provided medical care to Patient B from on or about September 12, 2008 through on or about February 16, 2012 for a variety of health issues, including recurrent urinary tract infections, hypertension, post cerebrovascular accident, aortic stenosis and pernicious anemia. Respondent's treatment of Patient B deviated from accepted standards of medical care as follows:

1. Respondent failed to adequately manage Patient B's recurring urinary tract infections, and/or Respondent failed to document her adequate management of Patient B's recurring urinary tract infections.

2. Respondent abruptly stopped seeing patients at her medical practice in Mt. Morris, New York in late March/early April 2012. Respondent failed to make

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. Accurately communicating to Patient B the appropriate antibiotic sensitive to Patient B's urine culture results on or about April 19, 2012 which were communicated to Respondent's office, and which indicated the growth of Enterococcus, and/or Respondent failed to document the communication of a sensitive antibiotic to Patient B.

b. Failing to order an antibiotic sensitive to Patient B's urine culture results on or about April 19, 2012 which were communicated to Respondent's office, and which indicated the growth of Enterococcus, and/or Respondent failed to document the prescribing of a sensitive antibiotic.

c. Failing to renew critical medications for Patient B during April and May 2012, and/or Respondent failed to document the renewal of critical medications.

d. Failing to respond to the attempts of Patient B's daughter to contact Respondent regarding critical medical issues of Patient B after Respondent abruptly closed her medical practice in April 2012, and/or failing to document the contact with Patient B's daughter.

3. Respondent failed to timely forward Patient B's medical record to Patient B's new medical provider in May 2012 after Respondent abruptly closed her medical practice, despite attempts to have the medical record forwarded.
4. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient B.

C. Respondent provided medical care to Patient C from on or about August 17, 2004 through on or about June 18, 2012 for a variety of health issues, including Post-Traumatic Stress Syndrome, multiple suicide attempts, anxiety, depression, migraine headaches and sleep disturbance. Respondent's treatment of Patient C deviated from accepted standards of medical care as follows:

1. Respondent, from on or about September 12, 2006 through March 9, 2012, prescribed excessive quantities of Benzodiazepines for Patient C without providing an adequate mental health evaluation, and/or despite Patient C's history of drug and alcohol abuse and/or despite Patient C's history of drug seeking behavior, and/or Respondent failed to document an adequate mental health evaluation.
2. Respondent inappropriately prescribed Diazepam and Amitriptyline to Patient C after Patient C's suicide attempt of March 24, 2008 when she took the same medications in combination with alcohol.
3. Respondent inappropriately prescribed narcotic pain relievers without adequate evaluations and/or justification for Patient C, who had a history of suicide attempts, and/or alcohol and drug abuse, and/or drug seeking behavior, and/or Respondent failed to document evaluations and/or justifications.
4. Respondent failed to perform any lethality assessments for Patient C which were indicated given the medications she was receiving and her history of physical abuse, suicide attempts and drug and alcohol abuse, and/or Respondent failed to document the performance of lethality assessments.
5. Respondent failed to adequately evaluate the "blackout episode" reported to Respondent by Patient C at the office visit on or about January 14, 2009 to determine whether a full cardiac and/or neurological workup or any other medical evaluation was warranted, and/or Respondent failed to document her evaluation.
6. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient C.

D. Respondent provided medical care to Patient D, from on or about January 28, 2009 through on or about November 11, 2011 for a variety of health issues, including hyperlipidemia, hypertension, obesity, sleep disturbance, hyperthyroidism, depression and anxiety. Respondent's treatment of Patient D deviated from accepted standards of medical care as follows:

1. Respondent, on or about June 24, 2009, failed to consult and/or coordinate with Patient D's psychiatrist before changing medications previously prescribed by Patient D's psychiatrist, and/or Respondent failed to document said consultation and/or coordination.
2. Respondent failed to adequately evaluate and/or timely respond to abnormal laboratory values, documented patient complaints, physical findings, and pathology report(s) as follows:
   a. Respondent failed to adequately evaluate Patient D's report of "blood pressure running high at times; having headaches" during Patient D's June 24, 2009 office visit and/or Respondent failed to document measures she took in response to Patient D's report of elevated blood pressure.
   b. Respondent failed to adequately evaluate and/or manage Patient D's elevated blood pressure of 141/97 during Patient A's May 9, 2011 office visit and/or Respondent failed to document measures she took in response to the elevated blood pressure.
   c. Respondent failed to acknowledge the laboratory results she ordered of March 3, 2011 during her May 9, 2011 office visit with Patient D, and instead referenced the laboratory results of June 25, 2010 and/or Respondent failed to document her acknowledgement of the March 3, 2011lab results.
   d. Respondent failed to adequately address Patient D's abnormal lipid panel during his May 9, 2011 office visit and/or Respondent failed to document measures she took in response to the abnormal lipid panel.
   e. Respondent failed to timely address the June 21, 2010 pathology report regarding the biopsy she obtained on June 18, 2010 from Patient D's

scrotum, waiting nearly eight months until Patient D's February 1, 2011 office visit, and/or Respondent failed to document the measures she took to timely address the June 21, 2010 pathology report.

   f. Respondent failed to address Patient D's low Vitamin D level from the March 3, 2011 laboratory results during his May 9, 2011 office visit and/ or Respondent failed to document the measures she took in response to Patient D's Vitamin D deficiency.

3. Respondent, on or about May 9, 2011inappropriately administered a Vitamin B-12 injection to Patient D without adequate medical justification, and/or Respondent failed to document said medical justification.
4. Respondent abruptly stopped seeing patients at her medical practice in Mt. Morris, New York in late March/early April 2012. Respondent failed to make reasonable arrangements for the continuation of medical care to Patient D who was, at the time Respondent stopped seeing patients, under and in need of immediate medical care, including:
   a. The ordering of medication(s) for the treatment of Patient D's hypertension, and/or
   b. The ordering of pain medication(s) for the treatment of Patient D's chronic knee pain, and/or
   c. The renewing of mental health medication(s) ordered for Patient D after his discharge from St. Mary's Hospital.
5. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient D.

E. Respondent provided medical care to Patient E from on or about January 5, 2010 through on or about March 21, 2012 for a variety of health issues, including birth control, respiratory difficulties and hyperlipidemia. Respondent's treatment of Patient E deviated from accepted standards of medical care as follows:

1. Respondent ordered and administered the medication Depo-Provera approximately every three months from on or about January 13, 2010 through

on or about March 21, 2012 to Patient E, who never had a documented pap smear.

2. Respondent failed to provide adequate follow up of her initial diagnosis of asthma/reactive airway disease in Patient E on or about June 27, 2011, and/or Respondent failed to document an adequate follow up.
3. Respondent abruptly stopped seeing patients at her medical practice in Mt. Morris, New York in late March/early April 2012. Respondent failed to make reasonable arrangements for the continuation of medical care to Patient E who was, at the time Respondent stopped seeing patients, under and in need of immediate medical care, including;
   a. Performing a pap smear, and/or
   b. The ordering and/or administering of Depo-Provera.
4. Respondent failed to release the medical records of Patient E despite the submission of signed medical releases to Respondent's office authorizing the release of said records, starting in May 2012, to allow for the continuation of Patient E's medical care by a subsequent physician following Respondent's abrupt closing of her medical practice.
5. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient E.

F. Respondent provided medical care to Patient F from on or about September 15, 2008 through on or about January 6, 2012 for a variety of health issues, including suppressed TSH levels, hypertension and hyperlipidemia. Respondent's treatment of Patient F deviated from accepted standards of medical care as follows:

1. Respondent failed to adequately treat and/or document treatment of Patient F's suppressed TSH levels from September 15, 2008 through January 6, 2012 as follows:
   a. Respondent maintained Patient F on 0.075 mg of levothyroxine daily from September 15, 2008 through January 6, 2012 despite laboratory values demonstrating consistently suppressed TSH levels.

b. Respondent failed to timely acknowledge and/or adequately treat Patient F in response to the abnormal values based on laboratory work she ordered from September 15, 2008 through January 6, 2012 which consistently demonstrated suppressed TSH levels, and/or Respondent failed to document measures she took to address Patient F's suppressed TSH levels, and/or Respondent failed to document her acknowledgement and/or adequate treatment of Patient F's suppressed TSH levels.

c. Respondent failed to provide adequate follow up for Patient F's suppressed TSH levels and hypertension between September 15, 2008 and October 18, 2010, and/or Respondent failed to document her follow up between September 15, 2008 and October 18, 2010.

2. Respondent abruptly stopped seeing patients at her medical practice in Mt. Morris, New York in late March/early April 2012. 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) for the treatment of Patient F's suppressed TSH levels, and/or

   b. The ordering of medication(s) for the treatment of Patient F's hyperlipidemia and/or

   c. The ordering of medication(s) for the treatment of Patient F's hypertension.

3. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient F.

G. Respondent provided medical care to Patient G from on or about May 10, 2010 through on or about March 26, 2012. Respondent's treatment of Patient G deviated from accepted standards of medical care as follows:

1. Respondent failed to release the medical records of Patient G despite the submission of signed medical releases to Respondent's medical office, authorizing the release of said records and several requests by Patient G

starting in May 2012, to allow for the continuation of Patient G's medical care following Respondent's abrupt closing of her medical practice in April 2012.

2. Respondent failed to make reasonable arrangements for the continuation of Patient G's critical medical care as a patient who was in need of medical care immediate after she abruptly closed her medical practice in April 2012.
3. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient G.

H. Respondent provided medical care to Patient H from on or about January 25, 2012 through on or about March 28, 2012 for a variety of health issues, including an abdominal aortic aneurysm, hyperlipidemia and other ailments. Respondent's treatment of Patient H deviated from accepted standards of medical care as follows:

1. Respondent abruptly stopped seeing patients at her medical practice in Mt. Morris, New York in late March/early April 2012. 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 medication for the treatment of Patient H's hypertension, and/or
   b. The ordering of medication for the treatment of Patient H's abdominal aortic aneurysm.
2. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient H.

I. Respondent provided medical care to Patient I during the period from on or about September 9, 2008 through on or about June 14, 2012 for a variety of health issues, including hypertension, atrial fibrillation, recurrent urinary tract infections, quadriplegia and recurrent decubiti. Respondent's treatment of Patient I deviated from accepted standards of medical care as follows:

1. Respondent failed to adequately monitor Patient I's significant health issues and comorbidities during this nearly four year period by documenting only three medical visits with Patient I, on September 9, 2008, May 18, 2009 and July 8, 2009.
2. Respondent failed to take and/or document adequate measures to monitor Patient I's PT/INR values between August 31, 2011 and June15, 2012.
3. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient I.

J. On or about June 12, 2012, the Office of Professional Medical Conduct (OPMC) sent Respondent a request pursuant to New York Public Health Law § 230 (10) (l) for six (6) patient records maintained by Respondent relevant to the investigations being conducted by OPMC. Respondent's agent signed for receipt of the June 12, 2012 request letter on June 13, 2012.

1. Respondent failed to respond to OPMC's lawful request until November 20, 2012, beyond the 30 days mandated by New York State Education Law § 6530 (28), despite repeated attempts to obtain the records in a more timely manner.

SPECIFICATION OF CHARGES

FIRST THROUGH SEVENTHSPECIFICATIONS

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.2 (a), and/or A and A.2 (b), and/or A and A.2 (c) and/or A and A.2 (d) and/or A and A.2 (e), and/or A and A.3.
2. Paragraphs B and B.2 (a), and/or B and B.2 (b), B and B.2 (c), and/or B and B.2 (d) and/or B and B.3.
3. Paragraphs D and D.4 (a), and/or D and D.4 (b), and/or D and D.4 (c).
4. Paragraphs E and E.3 (a), and/or E and E.3 (b) and/or E and E.4.
5. Paragraphs F and F.2 (a), and/or F and F.2 (b) and/or F and F.2 (c).
6. Paragraphs G and G.1, and/or G and G.2.
7. Paragraphs H and H.1 (a), and/or H and H.1 (b).

EIGHTH THROUGH ELEVENTH 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:

8. Paragraphs A and A.3, and/or
9. Paragraphs B and B.3, and/or
10. Paragraphs E and E.4, and/or
11. Paragraphs G and G.1.

TWELFTH THROUGH TWENTIETH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

12. Paragraphs A and A.1, A and A.2 (a), A and A.2 (b), A and A.2 (c), A and A.2 (d), A and A.2 (e), and/or A and A.3.
13. Paragraphs B and B.2 (a), B and B.2 (b), B and B.2 (c), B and B.2 (d), and/or B and B.3.

14. Paragraphs C and C.1, C and C.2, C and C.3, and/or C and C.4.

15. Paragraphs D and D.2 (a), D and D.2 (b), D and D.2 (d), D and D.2 (e), D and D.2 (f) D and D.4 (a), D and D.4 (b), and/or D and D.4 (c).

16. Paragraphs E and E.1, E and E.2, E and E.3 (a), E and E.3 (b), and/or E and E.4.

17. Paragraphs F and F.1 (a), F and F.1 (b), F and F.2 (a), F and F.1 (c), F and F.2 (a), F and F.2 (b), and/or F and F.2 (c).

18. Paragraphs G and G.1, and/or G and G.2.

19. Paragraphs H and H.1 (a), and/or H and H.1 (b).

20. Paragraphs I and I.1, and/or I and I.2.

TWENTY-FIRST 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:

21. Paragraphs A and A.1, A and A.2 (a), A and A.2 (b), A and A.2 (c), A and A.2 (d) A and A.2 (e), B and B.1, B and B.2 (a), B and B.2 (b), B and B.2 (c),B and B.2 (d), B and B.3, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, D and D.1, D and D.2 (a), D and D.2 (b), D and D.2 (c), D and D.2 (d), D and D.2 (e), D and D.2 (f), D and D.3,

D and D.4 (a), D and D.4 (b), D and D.4 (c), , E and E.1, E and E.2, E and E.3, E and E.4, F and F.1 (a), F and F.1 (b), F and F.1 (c), F and F.2 (a), F and F.2 (b), F and F.2 (c), G and G.1, G and G.2, H and H.1 (a), H and H.1 (b), I and I.1 and/or I and I.2.

TWENTY-SECOND THROUGH THIRTIETH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(6) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

22. Paragraphs A and A.1, A and A.2 (a), A and A.2 (b), A and A.2 (c), A and A.2 (d), A and A.2 (e), and/or A and A.3.
23. Paragraphs B and B.2 (a), B and B.2 (b), B and B.2 (c), B and B.2 (d), and/or B and B.3.
24. Paragraphs C and C.1, C and C.2, C and C.3, and/or C and C.4.
25. Paragraphs D and D.2 (a), D and D.2 (b), D and D.2 (d), D and D.2 (e), D and D.4 (a), D and D.4 (b), and/or D and D.4 (c).
26. Paragraphs E and E.1, E and E.2, E and E.3 (a), E and E.3 (b), and/or E and E.4.
27. Paragraphs F and F.1 (a), F and F.1 (b), F and F.2 (a), F and F.1 (c), F and F.2 (a), F and F.2 (b), and/or F and F.2 (c).

28. Paragraphs G and G.1, and/or G and G.2.

29. Paragraphs H and H.1 (a), and/or H and H.1 (b).

30. Paragraphs I and I.1, and/or I and I.2.

THIRTY-FIRST SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of:

31. Paragraphs A and A.1, A and A.2 (a), A and A.2 (b), A and A.2 (c), A and A.2 (d) A and A.2 (e), B and B.1, B and B.2 (a), B and B.2 (b), B and B.2 (c),B and B.2 (d), B and B.3, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, D and D.1, D and D.2 (a), D and D.2 (b), D and D.2 (c), D and D.2 (d), D and D.2 (e), D and D.2 (f), D and D.3, D and D.4 (a), D and D.4 (b), D and D.4 (c), , E and E.1, E and E.2, E and E.3, E and E.4, F and F.1 (a), F and F.1 (b), F and F.1 (c), F and F.2 (a), F and F.2 (b), F and F.2 (c), G and G.1, G and G.2, H and H.1 (a), H and H.1 (b), I and I.1 and/or I and I.2.

THIRTY-SECOND SPECIFICATION

FAILURE TO TIMELY RESPOND TO OPMC REQUEST FOR RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(28) by failing to respond within 30 days to written communications from the department of health and to make available any relevant records with respect to an inquiry or complaint about Respondent's professional misconduct, as alleged in the facts of:

32. Paragraphs J and J.1.

THIRTY-THIRD THROUGH FORTY-FIRST SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, as alleged in the facts of:

33. Paragraphs A and A.1, and/or A and A.4.
34. Paragraphs B and B.1, B and B.2 (a), B and B.2 (b), B and B.2 (c), and/or B and B.4.
35. Paragraphs C and C.1, C and C.3, C and C.4, C and C.5, and/or Paragraphs C and C.6.

36. Paragraphs D and D.1, D and D.2 (a), D and D.2 (b), D and D.2 (c), D and D.2 (d), D and D.2 (e), D and D.2 (f), D and D.3, and/or D and D.5.

37. Paragraphs E and E.1 E and E.2, and/or E and E.5,

38. Paragraphs F and F.1 (b), F and F.1 (c), and/or F and F.3.

39. Paragraphs G and G.3.

40. Paragraphs H and H.2, and/or

41. Paragraphs I and I.2.

DATE: March 28, 2014
Albany, New York

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

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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 supervising physician referred to in paragraph 5d.

b) The signed acknowledgment and curriculum vitae from the proposed health care professional referred to in paragraph 5e.

c) Certified true and complete copies of all evaluation and treatment records relating to Respondent's substance abuse/dependence (if any), 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.

d) 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, if any.

e) 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.

f) A current, independent, in-depth psychiatric evaluation by a board-certified psychiatrist.

g) 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, if any, 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 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.

d) 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.

e) 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.