

October 23, 2012

CERTIFIED MAIL-RECEIPT REQUESTED

Elwyn Charles Clark, D.O.

REDACTED

Re: License #247501

Dear Dr. Clark:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-218. This Order of Conditions pursuant to Public Health Law Section 230 is effective October 30, 2012.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

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

cc: William Wood, Esq.
Wood & Scher
222 Bloomingdale Road, Suite 311
White Plains, NY 10605

**IN THE MATTER
OF
ELWYN CHARLES CLARK, D.O.**

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

Upon the application of ELWYN CHARLES CLARK, D.O. (Licensee) in the attached Stipulation and Application for an Order of Conditions Pursuant to N.Y. Pub. Health Law § 230 (Application), which is made a part of this Order of Conditions Pursuant to N.Y. Pub. Health Law § 230 (Order), it is agreed that:

- the Application and its terms are adopted; and
- this Order shall be effective upon issuance by the Board, either by mailing of a copy of this Order by first class mail to Licensee at the address in the attached Application or by certified mail to Licensee's attorney, or upon facsimile transmission to Licensee or Licensee's attorney, whichever is first.

SO ORDERED.

DATE: 10/22/2012

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
ELWYN CHARLES CLARK, D.O.

STIPULATION AND
APPLICATION FOR
AN ORDER OF
CONDITIONS
PURSUANT TO
PUBLIC HEALTH LAW
§ 230

ELWYN CHARLES CLARK, D.O., represents that all of the following statements are true:

That on or about January 31, 2008, I was licensed to practice as a physician in the State of New York and issued License No. 247501 by the New York State Education Department.

My current address is REDACTED.

I am affiliated with the following hospitals and/or facilities:

Olean General Hospital and St. Luke's Cornwall Hospital

I understand that the New York State Board for Professional Medical Conduct ("the Board") has investigated the issues set forth in attached Exhibit "A".

I request that the Board and the Director of the Office of Professional Medical Conduct ("the Director"), in reliance upon the results of the investigation to date, *and upon my representation that I have practiced medicine without incident for at least a year before this Application*, conclude the investigation of these issues, provided I successfully and without incident comply with the Conditions set forth below. In consideration of the Board and the Director granting this Application, and upon the Board's election not to bring

disciplinary charges against me, I agree that the Board and the Director shall issue an Order of Conditions Pursuant to N.Y. Pub. Health Law § 230. Except as specified below, the terms and conditions imposed by this Order shall remain in effect for three years from the Order's effective date and shall set the following Conditions upon my practice:

- 1) Licensee's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Licensee as defined in N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of this Order and may subject Licensee to an action pursuant to N.Y. Pub. Health Law § 230.
- 2) Licensee shall remain in continuous compliance with all requirements of N.Y. Educ. Law § 6502, including but not limited to the requirements that a licensee shall register, and continue to be registered, with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Licensee shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Order's effective date and shall continue until the full term of the Order has run, and until any associated period of conditions and all terms and conditions have been completed and satisfied. My failure to comply with this condition, if proven and found at a hearing pursuant to N. Y. Pub. Health Law § 230(10), shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(29).
- 3) Licensee shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-

2719 with the following information, in writing, and ensure that this information is kept current: a full description of Licensee's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; all current and past affiliations and/or privileges, with hospitals, institutions, facilities, medical practices, managed care organizations, and/or applications for such affiliations and/or privileges; all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Licensee shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This Condition shall take effect upon the Order's effective date and shall continue at all times while Licensee possesses a license, regardless of whether the period of conditions is tolled pursuant to Condition #17.

- 4) Licensee shall cooperate fully with the Office of Professional Medical Conduct ("OPMC") in its administration and enforcement of this Order and in its investigation of Licensee. Licensee shall respond in a timely manner to all OPMC requests for written periodic verification of compliance with the terms of this Order, meet in person with the Director's designee, and respond promptly and provide all documents and information within Licensee's control to OPMC, as directed. This Condition shall take effect upon the Order's effective date and shall continue at all times while Licensee possesses a license, regardless of whether the period of conditions is tolled pursuant to Condition #17.

- 5) Licensee shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Licensee shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- 6) Licensee shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients.
- 7) The Director may review Licensee's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts and/or electronic records; and interviews or periodic visits with Licensee and staff at practice locations or OPMC offices.
- 8) Licensee shall provide access for DOH personnel to Licensee's office(s) to verify Licensee's compliance with this Order. This access shall include, but not be limited to, on-site inspections, observation and interviews.
- 9) At the direction of the Board and within 90 days of the effective date of the Order, Licensee shall be enrolled in, and shall fully participate in, a course of personalized continuing medical education with The Center for Personalized Education for Physicians (CPEP), Denver Colorado, of no less than three months duration, to include an assigned educational preceptor who is a physician board certified in emergency medicine, to be approved, in writing, by the Director of OPMC. The recommendations in the CPEP Assessment Report dated July 12, 2012 [henceforth "CPEP Report"], previously submitted by the Licensee, shall be the basis of Licensee's course of personalized continuing medical education.

- 10) Licensee shall comply with all requests for information and documentation by CPEP related to its assessment of Licensee and its exercise of responsibilities pursuant to this Order. Licensee shall provide CPEP with all information and documentation previously requested and not previously provided in connection with the CPEP Report. Licensee shall authorize CPEP to obtain any information from OPMC that CPEP deems necessary to its assessment, monitoring of, or educational plan for Licensee. Licensee shall authorize CPEP to modify its Assessment Report of July 12, 2012 and its recommendations, as CPEP deems appropriate, after CPEP has an opportunity to review the information not previously provided by the Licensee pursuant to its request, and/or such other information as CPEP may request and consider in the course of its assessment of Licensee. Licensee shall authorize CPEP to provide the Director of OPMC with any revised Assessment Report, and with all other information and documentation reviewed by CPEP related to its assessment of, monitoring of, or educational plan for, Licensee.
- 11) Licensee shall cause the preceptor to:
 - a) Submit reports on a quarterly basis to OPMC certifying whether Licensee is fully participating in the personalized continuing medical education program.
 - b) Report immediately to the Director of OPMC if Licensee withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by Licensee.

c) At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by Licensee toward remediation of all identified deficiencies.

- 12) Licensee shall, for a period of three years commencing 30 days after the Order's effective date, practice medicine only when monitored by a licensed physician, (practice monitor), board certified in an appropriate medical specialty, proposed by Licensee and subject to the written approval of the Director of OPMC. The Licensee shall cause the practice monitor to monitor Licensee's medical practice in accordance with a monitoring plan to be approved by the Director of OPMC. Such monitoring plan shall include, but not be limited to, provisions for selected medical record reviews, occasional observation of the Licensee in practice settings, required participation in hospital departmental meetings and enrollment in ongoing education courses, if any.
- 13) Licensee shall make available to the practice monitor any and all records, and/or access to the practice, requested by the practice monitor, including on-site observation. The practice monitor shall visit Licensee's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Licensee, including patient records, prescribing information and office records. The review will determine whether the Licensee's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived

deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

- 14) Licensee shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Public Health Law § 230(18)(b). Licensee shall provide the Director with proof of such coverage before Licensee may practice medicine after the effective date of this Order.
- 15) Licensee shall cause the practice monitor to report to OPMC on a quarterly basis regarding Licensee's compliance with the approved monitoring plan. These narrative reports shall address all aspects of Licensee's clinical practice including, but not limited to, the evaluation and treatment of patients, the monitor's assessment of patient records selected for review, detailed case description of any case found to not meet the established standards of care and Licensee's remediation of previously identified deficiency areas.
- 16) Licensee shall be solely responsible for all expenses associated with these terms, including fees, if any, for the clinical competency assessment, the personalized continuing medical education program, or to the monitoring physician.
- 17) The period of Conditions, and all enumerated Conditions except for Conditions # 3 and #4, shall toll when Licensee is not engaged in active medical practice in New York State for 30 consecutive days or more. Licensee shall notify the Director, in writing, if Licensee is not currently engaged in or intends to leave active medical practice in New York State for 30 consecutive days or more and Licensee shall then

notify the Director again at least 14 days before returning to active medical practice in New York State. Upon Licensee's return to active medical practice in New York State, the period of Conditions shall resume and Licensee shall fulfill any unfulfilled terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

- 18) Licensee shall comply with this Order, and all its terms and Conditions, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or violation of these terms, the Director and/or the Board may initiate a proceeding against Licensee under N.Y. Pub. Health Law § 230.

I stipulate that my failure to comply with these conditions shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I understand that nothing in this Application shall be construed as an admission by me of any act of alleged misconduct or as a finding of misconduct as to those issues referred to in Exhibit "A." I deny any acts of misconduct and reserve my right to assert all defenses I may have in any later or other proceeding.

I understand and agree that my failure to comply with, successfully complete, or satisfy any of the material conditions of this Order, and/or any unsatisfactory report by the practice monitor, shall vest the Director with the authority, in the exercise of reasonable discretion, to vacate this agreement and shall permit the Director to pursue further investigation and/or prosecution of misconduct charges against me as to the issues set

forth in Exhibit "A" to the full extent authorized by the Public Health Law and the Education Law.

I understand that an Order issued upon this Application does not bar prosecution for professional misconduct based upon allegations of violations of N.Y. Educ. Law § 6530 unrelated to the issues set forth in Exhibit "A", whether those alleged violations occurred before or after this Application. The Director may, at such time, also direct counsel to prepare charges that include allegations as to the issues set forth in Exhibit "A".

I agree that, if the Board grants this Application, the Chair of the Board shall issue an Order of Conditions in accordance with its terms. I further agree that the Department of Health shall notify the National Practitioner Data Bank and the Federation of State Medical Boards of this Order of Conditions pursuant to N.Y. Pub. Health Law § 230 and that the change in my licensure status is not disciplinary in nature. This Order of Conditions shall be posted on the Department of Health website(s).

I make this Application of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Application, I waive my right to contest the Order for which I apply, whether administratively or judicially, I agree to be bound by the Order, and I ask that the Board grant this Application.

I understand and agree that the attorney for the Department of Health, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Order, based upon my Application, or to decline to do so. I

further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 10/17/2012

REDACTED

~~ELWYN CHARLES CLARK, D.O.~~
LICENSEE

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

DATE: 10-17-12

REDACTED

WILLIAM WOOD, ESQ.
Attorney for Licensee

DATE: Oct. 18, 2012

REDACTED

MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 10/22/12

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct