



**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

April 25, 2023

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Jeremy L. McKay, M.D.

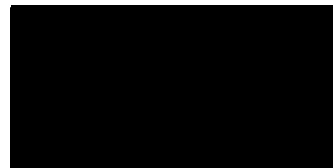

Re: License No. 270031

Dear Dr. McKay:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 23-085. This order and any penalty provided therein goes into effect May 2, 2023.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,



David Besser, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Charles Patton, Esq.
Martin, Ganotis, Brown, Mould & Currie, P.C.
5788 Widewaters Parkway
Dewitt, New York 13214

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

BPMC No. 23-085

IN THE MATTER
OF
JEREMY L. MCKAY, M.D.

CONSENT
ORDER

Upon the application of (Respondent) JEREMY L. MCKAY, 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

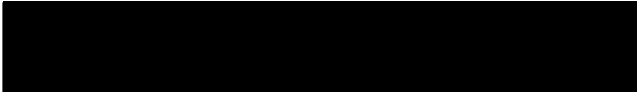
by mailing of a copy of this Consent Order, either by first class mail to Respondent at
the address in the attached Consent Agreement or by certified mail to Respondent's
attorney, OR

upon facsimile transmission to Respondent or Respondent's attorney,

whichever is first.

SO ORDERED.

DATE: 4/24/2023


Deborah Whitfield, M.A., Ph.D., MBA
Vice Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
JEREMY L. MCKAY, M.D.

CONSENT
AGREEMENT

JEREMY L. MCKAY, M.D., represents that all of the following statements are true:

That on or about May 3, 2013, I was licensed to practice as a physician in the State of New York and issued License No. 270031 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 one or more of the specifications of misconduct in the Statement of Charges, in full satisfaction of the charges against me, and agree to the following penalty:

Respondent shall obtain a clinical competency assessment (CCA) performed by a program for such assessment as directed by the Director of OPMC, as further set out in Exhibit "B", attached.

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

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

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 the Licensee's profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to the Licensee's physician profile information either electronically using the Department's secure web site or on forms prescribed by the Department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the Department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order.

Respondent shall meet with a person designated by the Director of OPMC,

as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

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

I agree that, if I am charged with professional misconduct in the future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the N.Y. Pub. Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities or other confidential information, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 4/10/23

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[REDACTED]

JEREMY L. MCKAY, M.D.
RESPONDENT

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

DATE: 9/11/2023

[Redacted Signature]

CHARLES PATTON, ESQ.
Attorney for Respondent

DATE: April 12, 2023

[Redacted Signature]

NATHANIAL WHITE
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 4/14/2023

[Redacted Signature]

For

SHELLY WANG BANDAGO
Director
Office of Professional Medical Conduct

EXHIBIT A

IN THE MATTER

OF

JEREMY L. MCKAY, M.D.

STATEMENT
OF
CHARGES

JEREMY L. MCKAY, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 3, 2013, by the issuance of license number 270031 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (patients are identified in Appendix "A", attached), a seventy-one-year-old man, at Auburn Community Hospital in Auburn, New York on or about October 5, 2019. Respondent was the Anesthesiologist for Patient A during emergency surgery for an incarcerated incisional hernia repair which was converted from a laparoscopic procedure to an open procedure after it was determined a partial intestinal resection was needed. Respondent failed to exercise the care to Patient A that would be exercised by a reasonably prudent physician under the circumstances and/or Respondent failed to adequately document the care provided.

B. Respondent provided medical care to Patient B, a sixty-eight-year-old woman, at Auburn Community Hospital on or about March 15, 2018. Respondent was the Anesthesiologist for Patient B during a surgery for an internal fixation of a right femur fracture. On or about March 15, 2018, Respondent failed to exercise the care to Patient B that would be exercised by a reasonably prudent physician under the circumstances and/or Respondent failed to adequately document the care provided.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

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:

1. Paragraphs A and B.

SECOND SPECIFICATION

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:

2. Paragraphs A and B.

DATE: *April 13*, 2023
Albany, New York


JEFFREY J. CONKLIN
Deputy Director
Bureau of Professional Medical Conduct

EXHIBIT "B"

Respondent shall complete the assessment to the satisfaction of the Director of OPMC and shall cause a written report of such assessment to be provided directly to the Director of OPMC within sixty (60) days of the effective date of this Order, unless an extension is granted, in writing, by the Director. Respondent shall schedule the clinical competency assessment at a program approved by the Director of OPMC within thirty (30) days of the effective date of this Order, and shall schedule the assessment for the approved program's first available session.

Respondent shall be responsible for all expenses related to the clinical competency assessment and shall provide to the Director of OPMC proof of full payment of all costs that may be charged. This condition shall not be satisfied in the absence of actual receipt, by the Director, of such documentation, and any failure to satisfy this condition shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

Respondent shall be subject to any further terms and/or conditions as may be imposed by the Director, in the Director's sole reasonable discretion, as the Director deems necessary based upon all relevant facts and circumstances then known to OPMC, including, but not limited to, those related to the OPMC investigation of Respondent, the results and recommendations of the CCA, and Respondent's practice in the future, as deemed by the Director to be necessary to protect the public health. Respondent, by making this Application, stipulates that the Director shall be so authorized.

In the event the Director of OPMC requires the Respondent to practice only with the use of a preceptor, the Respondent shall:

No more than 60 days following the Director's notification to utilize a Preceptor, the Respondent shall identify a Preceptor, preferably a physician who is board certified in the same specialty, and subject to the Director of OPMC's written approval. No more than 30 days after learning that the approved Preceptor is no longer willing or able to serve or no more than 30 days after having been notified by the Director that the Preceptor has been discharged for cause, which shall include but not be limited to the inadequacy of the Preceptor's reports and/or performance, Respondent shall have an approved successor in place, subject to the Director's written approval. Upon approval, the new Preceptor shall perform the duties described below. Regardless of the reason necessitating a replacement, if the Director does not approve Respondent's proposed new Preceptor, Respondent shall immediately cease the practice of medicine, unless

notified by the Director, in writing, of an extension, which may be granted at the Director's discretion. In that event, Respondent shall propose another Preceptor, which the Director has 30 days to approve or disapprove until a Preceptor is accepted. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

The Respondent shall cause the Preceptor to:

- Develop and submit to the Director of OPMC for written approval a remediation plan, which addresses the deficiencies /retraining recommendations identified in the CCA. Additionally, this proposal shall establish a timeframe for completion of the remediation program.
- Submit progress reports at periods identified by OPMC certifying whether the Respondent is fully participating in the personalized continuing medical education program and is making satisfactory progress towards the completion of the approved remediation plan.
- Report immediately to the Director of OPMC if the Respondent withdraws from the program and report promptly to OPMC any non-compliance by the Respondent.
- At the conclusion of the program, and at any time prior to the conclusion, as Preceptor deems appropriate, submit to the Director a detailed assessment of the progress made by the Respondent toward remediation of all identified deficiencies, a recommendation regarding the need for any further remediation or training, and any recommendation regarding advisable restrictions, if any, on Respondent's future medical practice.

Respondent 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.