These charges are only allegations which may be contested by the licensee in an Administrative hearing.

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

IN THE MATTER OF DAVID MCDONOUGH, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: David McDonough M.D.
111 Fashion Lane, Suite 200
Tustin, California 92780

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on November 14, 2019, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

¹ For GPS purposes, enter "Menands", not "Albany".

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above. Should the parties have objection to proposed witnesses or documentary evidence, the party raising the objection shall contact the Bureau of Adjudication to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE ŞERVED.

Department attorney: Initial here

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATED:

New York, New York September 20, 2019

> Henry Weintraub Chief Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Deborah Beth Medows Senior Attorney Bureau of Professional Medical Conduct Division of Legal Affairs New York State Department of Health (212) 417-4450 (o) EXHIBIT "A"

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

IN THE MATTER

OF

DAVID MCDONOUGH, M.D.

OF CHARGES

DAVID MCDONOUGH, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 17, 1986, by the issuance of license number 167974 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 17, 2018, Respondent voluntarily entered into a Stipulated Settlement and Disciplinary Order with the Medical Board of California. The Settlement and Order followed an Order Granting Interim Suspension dated on or about May 2, 2018, which followed an Accusation by the Medical Board of California dated on or about April 4, 2018, that stemmed from an anonymous complaint on or about April 24, 2015.

The Accusation, which was incorporated by reference into the Stipulated Settlement and Disciplinary Order, stated that Respondent's urinalysis result revealed the presence of amphetamine, ethylglucuronide (alcohol), and

methamphetamine, and that Respondent failed to comply with mental and physical examinations, as ordered on October 26, 2017.

The May 17, 2018 Order revoked Respondent's medical license, with revocation stayed and Respondent placed on probation for five years, subject to terms and conditions.

These terms included: enrollment in a professionalism program; abstinence from controlled substances and alcohol; completion of clinical diagnostic evaluations and reports; biological fluid testing; substance abuse support group meetings; a worksite monitor for substance abusing; notice of employer or supervisor information; violation of probation condition for substance abusing licensees; notification of the Decision and Accusation to the Chief of Staff or CEO of every hospital where privileges or membership were extended to Respondent, at any other facility where he engages in the practice of medicine, and to the CEO at every insurance carrier that extends malpractice coverage; prohibition from supervision of physical assistants and advanced practice nurses; a requirement to obey all laws; and quarterly declarations regarding compliance.

The Stipulated Settlement and Disciplinary Order was adopted as the Decision and Order of the Medical Board of California, effective September 28, 2018.

- 1. The conduct resulting in the Order would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:
 - a. New York Education Law §6530(8) (Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics,

- barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except for a licensee who is maintained on an approved therapeutic regiment which does not impair the ability to practice, or having a psychiatric condition which impairs the licensee's ability to practice.)
- b. New York Education Law §6530(15) (Failure to comply with an order issued pursuant to subdivision seven, paragraph (a) of subdivision ten of section two hundred thirty of the public health law.)

SPECIFICATION OF CHARGES

HAVING A DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, namely N.Y. Educ. Law §6530(8) and N.Y. Educ. Law §6530 (15) as alleged in the facts of the following:

1. The facts in Paragraphs A and its subparagraphs.

DATE: September 4, 2019New York, New York

> Henry Weintraub J Chief Counsel Bureau of Professional Medical Conduct

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