

**IN THE MATTER**  
**OF**  
**JAMES JAY COLE, M.D.**

COMMISSIONER'S  
ORDER AND  
NOTICE OF  
HEARING

TO: JAMES JAY COLE, M.D.  
c/o Danielle Meyers, Esq.  
*via email and regular mail*  
O'Connor First  
20 Corporate Woods Boulevard  
Albany, New York 12211  
[meyers@oobf.com](mailto:meyers@oobf.com)

The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that JAMES JAY COLE, M.D. (hereinafter: "Respondent"), New York medical license number 181250, is engaging in or maintaining a condition or activity which constitutes an imminent danger to the health of the people and that it is therefore prejudicial to the interests of the people to delay action until the opportunity for a hearing can be provided.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12)(a), that effective immediately, Respondent shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law §230(12)(a).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional

Medical Conduct on May 7, 2021 at 10:00 a.m. The hearing may be conducted by video conference or at the offices of the New York State Health Department, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing 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, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days

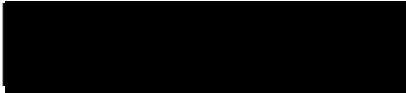
prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. 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 FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

April 30, 2021



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Howard A. Zucker, M.D., J.D.  
Commissioner of Health  
New York State Health Department

Inquiries should be directed to:

Nathaniel White, Esq.  
Associate Counsel  
Hannah Moore, Esq.  
Assistant Counsel  
Bureau of Professional Medical Conduct  
Corning Tower, RM 2512  
Empire State Plaza  
Albany, NY  
518-473-4282

**IN THE MATTER**

**OF**

**JAMES JAY COLE, M.D.**

STATEMENT  
OF  
CHARGES

JAMES JAY COLE, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 11, 1990 by the issuance of license number 181250 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

1. On or about 05/03/2016, Respondent voluntarily entered into Consent Order BPMC No. 16-159 ("Order") with the New York State Board for Professional Misconduct ("Board"). By entering the Order, Respondent did not contest the professional misconduct charge alleging negligence on more than one occasion in violation of N.Y. Educ. Law § 6530(3). The Order was approved by the Board on or about 05/10/2016 and became effective on or about 05/20/2016. The Order imposed: a license limitation precluding Respondent from performing electromyography studies and/or nerve conduction studies; a five-year stayed suspension; a five-year term of probation; and a \$2,500.00 fine. The Order included, among others, the following terms of probation:

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law (probation terms, paragraph one).
2. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices (probation terms, paragraph six).
3. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances (probation terms, paragraph seven).
4. Respondent shall enroll in and successfully complete continuing education programs in the areas of prescribing controlled substances and recordkeeping. This continuing education program is subject to the Director of OPMC's prior written approval and shall be successfully completed within the first 90 days of the probation period (probation terms, paragraph ten).

A. Respondent provided medical care to Patient A (each patient is identified in the attached Appendix A), then a 36-year-old female, at Respondent's medical office on Western Avenue in Albany, New York, at various times including between from on or about 05/17/2017 to on or about 09/02/2019. Respondent's medical care of Patient A deviated from accepted standards of care as follows:

1. Respondent, on one or more occasions, failed to obtain and/or document an adequate history for Patient A.
2. Respondent, on one or more occasions, failed to conduct and/or document an adequate physical examination for Patient A.
3. Respondent, on one or more occasions, inappropriately prescribed Patient A medications without adequate medical indication, and/or without documenting an adequate medical indication.
4. Respondent, on one or more occasions, prescribed Patient A inappropriate dosages and/or combinations of medication, including but not limited to controlled substances.
5. Respondent, on one or more occasions, failed to adequately evaluate and/or monitor Patient A's compliance with her medication regimen.
6. Respondent failed to maintain an adequate medical record for Patient A.
7. Respondent's conduct in the care and treatment of Patient A violated paragraphs one and seven of the probation terms in BPMC Order No. 16-159.

B. Respondent provided medical care to Patient B, then a 33-year-old male, at Respondent's medical office on Western Avenue in Albany, New York, at various times including between from on or about 01/28/2014 to on or about 08/01/2019. Respondent's medical care of Patient B, from on or about 05/20/2016 to on or about 08/01/2019, deviated from accepted standards of care as follows:

1. Respondent, on one or more occasions, failed to obtain and/or document an adequate history for Patient B.
2. Respondent, on one or more occasions, failed to conduct and/or document an adequate physical examination for Patient B.
3. Respondent, on one or more occasions, inappropriately prescribed Patient B medications without adequate medical indication, and/or without documenting an adequate medical indication.

4. Respondent, on one or more occasions, prescribed Patient B inappropriate dosages and/or combinations of medication, including but not limited to controlled substances.
5. Respondent, on one or more occasions, failed to adequately evaluate and/or monitor Patient B's compliance with his medication regimen.
6. Respondent failed to maintain an adequate medical record for Patient B.
7. Respondent's conduct in the care and treatment of Patient B violated paragraphs one and seven of the probation terms in BPMC Order No. 16-159.

C. Respondent provided medical care to Patient C, then a 37-year-old female, at Respondent's medical office on Western Avenue in Albany, New York, at various times including between from on or about 03/02/2011 to on or about 10/05/2019. Respondent's medical care of Patient C, from on or about 05/20/2016 to on or about 10/05/2019 deviated from accepted standards of care as follows:

1. Respondent, on one or more occasions, failed to obtain and/or document an adequate history for Patient C.
2. Respondent, on one or more occasions, failed to conduct and/or document an adequate physical examination for Patient C.
3. Respondent, on one or more occasions, inappropriately prescribed Patient C medications without adequate medical indication, and/or without documenting an adequate medical indication.
4. Respondent, on one or more occasions, prescribed Patient C inappropriate dosages and/or combinations of medication, including but not limited to controlled substances.
5. Respondent, on one or more occasions, failed to adequately evaluate and/or monitor Patient C's compliance with her medication regimen.
6. Respondent failed to maintain an adequate medical record for Patient C.
7. Respondent's conduct in the care and treatment of Patient C violated paragraphs one and seven of the probation terms in BPMC Order No. 16-159.

D. Respondent provided medical care to Patient D, then a 55-year-old male, at Respondent's medical office on Western Avenue in Albany, New York, at various times including between from on or about 10/6/2009 to on or about 09/16/2019. Respondent's medical care of Patient D, from

on or about 05/20/2016 to on or about 09/16/2019, deviated from accepted standards of care as follows:

1. Respondent, on one or more occasions, failed to obtain and/or document an adequate history for Patient D.
2. Respondent, on one or more occasions, failed to conduct and/or document an adequate physical examination for Patient D.
3. Respondent, on one or more occasions, inappropriately prescribed Patient D medications without adequate medical indication, and/or without documenting an adequate medical indication.
4. Respondent, on one or more occasions, prescribed Patient D inappropriate dosages and/or combinations of medication, including but not limited to controlled substances.
5. Respondent, on one or more occasions, failed to adequately evaluate and/or monitor Patient D's compliance with his medication regimen.
6. Respondent failed to maintain an adequate medical record for Patient D.
7. Respondent's conduct in the care and treatment of Patient D violated paragraphs one and seven of the probation terms in BPMC Order No. 16-159.

E. Respondent provided medical care to Patient E then a 52-year-old female, at Respondent's medical office on Western Avenue in Albany, New York, at various times including between from on or about 03/29/2011 to on or about 08/03/2019. Respondent's medical care of Patient E, from on or about 05/20/2016 to on or about 08/03/2019, deviated from accepted standards of care as follows:

1. Respondent, on one or more occasions, failed to obtain and/or document an adequate history for Patient E.
2. Respondent, on one or more occasions, failed to conduct and/or document an adequate physical examination for Patient E.
3. Respondent, on one or more occasions, inappropriately prescribed Patient E medications without adequate medical indication, and/or without documenting an adequate medical indication.
4. Respondent, on one or more occasions, prescribed Patient E inappropriate dosages and/or combinations of medication, including but not limited to controlled substances.
5. Respondent, on one or more occasions, failed to adequately evaluate and/or monitor Patient E's compliance with her medication regimen.



6. Respondent failed to maintain an adequate medical record for Patient E.
7. Respondent's conduct in the care and treatment of Patient E violated paragraphs one and seven of the probation terms in BPMC Order No. 16-159.

F. Respondent provided medical care to Patient F then a forty-one-year-old male, at Respondent's medical office on Western Avenue, Albany, New York at various times including between from on or about 04/12/2011 to on or about 09/24/2019. Respondent's medical care of Patient F, from on or about 05/20/2016 to on or about 09/24/2019, deviated from accepted standards of care as follows:

1. Respondent, on one or more occasions, failed to obtain and/or document an adequate history for Patient F.
2. Respondent, on one or more occasions, failed to conduct and/or document an adequate physical examination for Patient F.
3. Respondent, on one or more occasions, inappropriately prescribed Patient F medications without adequate medical indication, and/or without documenting an adequate medical indication.
4. Respondent, on one or more occasions, prescribed Patient F inappropriate dosages and/or combinations of medication, including but not limited to controlled substances.
5. Respondent, on one or more occasions, failed to adequately evaluate and/or monitor Patient F's compliance with his medication regimen.
6. Respondent failed to maintain an adequate medical record for Patient F.
7. Respondent's conduct in the care and treatment of Patient F violated paragraphs one and seven of the probation terms in BPMC Order No. 16-159.

G. Respondent provided medical care to Patient G, then a 51-year-old female as of 05/27/2016, at Respondent's medical office on Western Avenue in Albany, New York at various times including between from on or about 12/11/2001 to on or about 05/27/2016. Respondent's medical care of Patient G, from on or about 05/20/2016 to on or about 05/27/2016, deviated from accepted standards of care as follows:

1. Respondent failed to conduct and/or document an adequate physical examination for Patient G.

2. Respondent provided treatment to Patient G, including the performance of multiple injection procedures, without adequate medical indication and/or without documenting adequate medical indication.
3. Respondent prescribed and/or maintained Patient G on a combination of medications, including but not limited to various muscle relaxants, without adequate medical indication, and/or without documenting an adequate medical indication.
4. Respondent provided treatment to Patient G, including multiple injection procedures, without appropriate certification in cardiopulmonary resuscitation.
5. Respondent provided treatment to Patient G, including multiple injection procedures, without having appropriate emergency medical equipment, such as an automated external defibrillator, at his office.
6. Respondent failed to adequately document details of an injection procedure and/or Respondent failed to adequately document that the patient had an emergency medical event at the Respondent's office following the administration of injected medications by Respondent.
7. Respondent failed to maintain an adequate medical record for Patient G.
8. Respondent failed to adequately treat Patient G during and/or after the patient experienced an emergency medical event at the Respondent's office.

H. Respondent provided medical care to Patient H then a 41-year-old female, at Respondent's medical office on Western Avenue in Albany, New York, at various times including between from on or about 07/16/2009 to on or about 01/30/2019. Respondent's medical care of Patient H, from on or about 05/20/2016 to on or about 01/30/2019, deviated from accepted standards of care as follows:

1. Respondent, on one or more occasions, failed to obtain and/or document an adequate history for Patient H.
2. Respondent, on one or more occasions, failed to conduct and/or document an adequate physical examination for Patient H.
3. Respondent, on one or more occasions, performed injection procedures without adequate medical indication, and/or without documenting adequate medical indication.
4. Respondent, on one or more occasions, prescribed syringes to Patient H, without adequate medical indication, and or/without documenting adequate medical indication.

5. Respondent, on one or more occasions, inappropriately prescribed Patient H medications without adequate medical indication, and/or without documenting an adequate medical indication.
6. Respondent, on one or more occasions, prescribed Patient H inappropriate dosages and/or combinations of medication, including but not limited to controlled substances.
7. Respondent, on one or more occasions, failed to adequately evaluate and/or monitor Patient H's compliance with her medication regimen.
8. Respondent failed to maintain an adequate medical record for Patient H.

I. On or about 05/02/2019, Respondent maintained conditions in his medical office which violated scientifically accepted infection control practices in that:

1. Respondent failed to properly dispose of and/or store contaminated needles and syringes.
2. Respondent failed to maintain his examination room, including his examination table, in a sanitary condition.
3. Respondent's conduct on or about 05/02/2019 violated paragraph six of the probation terms in BPMC Order No. 16-159.

J. On or about 10/01/2019, Respondent maintained conditions in his medical office which violated scientifically accepted infection control practices in that:

1. Respondent failed to properly dispose of and/or store contaminated needles and syringes.
2. Respondent failed to maintain his examination room, including his examination table, in a sanitary condition.
3. Respondent's conduct on or about 10/01/2019 violated paragraph six of the probation terms in BPMC Order No. 16-159.

K. On or about 07/22/2020, Respondent maintained conditions in his medical office which violated scientifically accepted infection control practices in that:

1. Respondent failed to properly dispose of and/or store contaminated needles and syringes.

2. Respondent failed to maintain his examination room, including his examination table, in a sanitary condition.
3. Respondent's conduct on or about 07/22/2020 violated paragraph six of the probation terms in BPMC Order No. 16-159.

### **SPECIFICATION OF CHARGES**

#### **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:

1. Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, 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, D and D.3, D and D.4, D and D.5, E and E.1, E and E.2, E and E.3, E and E.4, E and E.5, F and F.1, F and F.2, F and F.3, F and F.4, F and F.5, G and G.1, G and G.2, G and G.3, G and G.4, G and G.5, G and G.6, G and G.8, H and H.1, H and H.2, H and H.3, H and H.4, H and H.5, H and H.6, H and H.7, I and I.1, I and I.2, J and J.1, J and J.2, K and K.1 and/or K and K.2.

#### **SECOND THROUGH NINTH 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:

2. Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, and/or A and A.5.

3. Paragraphs B and B.1, B and B.2, B and B.3, B and B.4, and/or B and B.5.
4. Paragraphs C and C.1, C and C.2, C and C.3, C and C.4, and/or C and C.5.
5. Paragraphs D and D.1, D and D.2, D and D.3, D and D.4, and/or D and D.5.
6. Paragraphs E and E.1, E and E.2, E and E.3, E and E.4, and/or E and E.5.
7. Paragraphs F and F.1, F and F.2, F and F.3, and/or F and F.5.
8. Paragraphs G and G.1, G and G.2, G and G.4, G and G. 5, G and G.6, and/or G and G.8.
9. Paragraphs H and H.1, H and H.2, H and H.3, H and H.4, H and H.5, H and H.6, and/or H and H.7.

#### **TENTH 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:

10. Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, 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, D and D.3, D and D.4, D and D.5, E and E.1, E and E.2, E and E.3, E and E.4, E and E.5, F and F.1, F and F.2, F and F.3, F and F.4, F and F.5, G and G.1, G and G.2, G and G.3, G and G.4, G and G.5, G and G.6, G and G.8, H and H.1, H and H.2, H and H.3, H and H.4, H and H.5, H and H.6, H and H.7, I and I.1, I and I.2, J and J.1, J and J.2, K and K.1, and/or K and K.2.

#### **ELEVENTH THROUGH EIGHTEENTH SPECIFICATION**

#### **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:

11. Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, and/or A and A.5
12. Paragraphs B and B.1, B and B.2, B and B.3, B and B.4, and/or B and B.5
13. Paragraphs C and C.1, C and C.2, C and C.3, C and C.4, and/or C and C.5
14. Paragraphs D and D.1, D and D.2, D and D.3, D and D.4, and/or D and D.5.
15. Paragraphs E and E.1, E and E.2, E and E.3, E and E.4, and/or E and E.5.
16. Paragraphs F and F.1, F and F.2, F and F.3, and/or F and F.5.
17. Paragraphs G and G.1, G and G.2, G and G.4, G and G. 5, G and G.6, and/or G and G.8.
18. Paragraphs H and H.1, H and H.2, H and H.3, H and H.4, H and H.5, H and H.6, and/or H and H.7

**NINETEENTH SPECIFICATION**

**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:

19. Paragraphs A and A.6, B and B.6, C and C.6, D and D.6, E and E.6, F and F.6, G and G.7, and/or H and H.8.

**TWENTIETH SPECIFICATION**

**INFECTION CONTROL PRACTICES**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law 6530(47) for failing to use scientifically accepted barrier precautions and infection control practices as established by the department of health pursuant to section two hundred thirty-a of the public health law, as alleged in the facts of:

20. Paragraphs I and I.1, I and 1.2, J and J.1, J and J.2, K and K.1, and/or K and K.2.

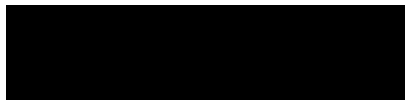
**TWENTY-FIRST SPECIFICATION**

**VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of the following:

21. Paragraphs 1 and 1.1, 1 and 1.2, 1 and 1.3, A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, C and C.6, C and C.7, D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, D and D.6, D and D.7, E and E.1, E and E.2, E and E.3, E and E.4, E and E.5, E and E.6, E and E.7, F and F.1, F and F.2, F and F.3, F and F.4, F and F.5, F and F.6, F and F.7, I and I.1, I and I.2, J and J.1, J and J.2, K and K.1, and/or K and K.2.

DATE: April 28, 2021  
Albany, New York



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TIMOTHY J. MAHAR  
Deputy Counsel  
Bureau of Professional Medical Conduct