

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

ORDER

TO: JAMES JAY COLE, M.D.
C/o Danielle Meyers, Esq.
O'Connor First
20 Corporate Woods Blvd, 4th Floor
Albany, NY 12211

The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, in consideration of a Consent Order, BPMC No. 21-158, (Attachment A), issued by the New York State Board for Professional Medical Conduct on or about August 6, 2021, effective August 13, 2021, which constitutes a final resolution of the matters under investigation by the New York State Office of Professional Medical Conduct, and which limits the Respondent's license to practice medicine pursuant to § 230-a(3) of the Public Health Law to preclude the clinical practice of medicine for ninety (90) days except to permit the Respondent to see current patients for the purpose of referring said patients to a physician, as appropriate, and to permit the appropriate release of treatment records; which also limits the Respondent's license pursuant to § 230-a(6) effective ninety (90) days after the effective date of the Consent Order to preclude the Respondent from registration or issuance of any further license; and which places a condition on the Respondent's license ninety (90) days after the effective date which precludes the practice of medicine in New York State or in any setting where the Respondent's practice is based solely on the Respondent's New York license, among other terms and conditions, has determined that there is no longer cause for the continuation of the Commissioner's Summary Order issued on April 30, 2021, (Attachment B), and continued on July 7, 2021 against JAMES JAY COLE, M.D.

It is therefore:

ORDERED, that the Commissioner's Summary Order for James Jay Cole, M.D., BPMC Order No. 21-088, is rescinded effective August 13, 2021 and Respondent shall be subject to the terms and conditions of BPMC Order No. 21-158.

DATED: Albany, New York
August 10, 2021



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

Attachment A

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

BPMC No. 21-158

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

CONSENT
ORDER

Upon the application of (Respondent) JAMES JAY COLE, 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: 8/05/2021



THOMAS T. LEE, M.D.
Interim Chair
State Board for Professional Medical Conduct

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

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

CONSENT
AGREEMENT

JAMES JAY COLE, M.D., represents that all of the following statements are true:

That on or about 01/11/1990, I was licensed to practice as a physician in the State of New York, and issued License No. 181250 by the New York State Education Department.

My current address is: 1672 Western Ave. Albany, New York, 12203-4218, 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.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the First Specification, Negligence On More Than One Occasion, for patients A - F, in full satisfaction of the charges against me, and agree to the following penalty:

- Upon this Order's effective date, and for 90 days thereafter, Respondent's license to practice medicine in the state of New York shall be limited pursuant to § 230-a(3) of the Public Health Law so as to preclude the clinical practice of medicine with the sole exception of such activities that are necessary for the orderly closing of Respondent's practice. This exception will permit Respondent to see current patients for the purpose of referring said patients to a physician, as appropriate, with whom Respondent has no financial relationship, and who shall be directed by Respondent to exercise their independent judgment as to whether any evaluation or treatment is indicated. The exception will also permit the appropriate release of treatment records but shall not include diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity or physical condition.
- Effective ninety (90) days from the effective date of this Order, Respondent shall be subject to a limitation precluding registration or issuance of any further license pursuant to N.Y. Pub. Health Law § 230-a(6);

I further agree that the Consent Order for which I apply 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; and

That, the Commissioner's Order of 04/30/2021 shall remain in effect until the effective date of this Order, at which time the Commissioner's Order will be vacated; and

That, effective ninety (90) days from the effective date of this Order, Respondent shall be precluded from practicing medicine in New York State, from practicing in any setting where the Respondent's practice is based solely on the Licensee's New York license, and from further reliance upon Respondent's New York license to practice medicine to exempt Respondent from the licensure, 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; and

That if Respondent is currently registered to practice medicine in New York State, Respondent shall, within 120 days of the effective date of this Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," shall provide proof of such notification to the Director of OPMC immediately upon having done so, and shall not reactivate or reregister the license at any time; 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 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 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; and

That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

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

I agree that if I am charged with professional misconduct in 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 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 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 Order, this 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 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 ask that the Board adopt this Consent Agreement.

I am aware and agree that, regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the Consent Agreement that I propose in this application, or to decline to do so.

DATE July 29, 2021




JAMES JAY COVE, M.D.
RESPONDENT

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

DATE: 7/29/21


DANIELLE N. MEYERS, Esq.
Attorney for Respondent

DATE: July 29, 2021


NATHANIAL WHITE
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 8/3/2021

 For
SHELLY WANG BANDAGO
Interim Director
Office of Professional Medical Conduct

EXHIBIT "A"

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 § 8530(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. 16-169.

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.
6. 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 10/05/2016. 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.7, 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



TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

**Requirements for Closing a Medical Practice
(Following Agreement to Never Register/Never Practice)**

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, except for permitting the appropriate referral of patients and the appropriate release of patient records for 90 days after the effective date 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 in New York or pursuant to a New York license.
2. Within 95 days of the Order's effective date, Licensee shall deliver Licensee's current biennial registration, if any, to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2718.
3. Within 90 days of the Order's effective date, Licensee shall, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, notify all patients of the cessation 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 90 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. Within 3 days of the Order's effective date, Licensee shall notify OPMC of the arrangements for how patients can request and obtain their treatment records for the 90-day time period following this Order's effective date. This notification shall

include the name, address, and telephone number of an appropriate and acceptable contact person.

5. Licensee shall also, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, make arrangements for the transfer and maintenance of all patient medical records. Within 90 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.
6. 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 the Licensee's 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.

7. 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.
8. Within 90 days of the Order's effective date, Licensee shall, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, 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.
9. Licensee shall not, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, 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, for a period of 90 days after this Order's effective date.
10. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine in New York, 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.
11. 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.

Attachment B

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

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


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