NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

June 9, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dong Soo Kim, M.D.
[redacted]

Michael S. Kelton, Esq.
Abrams, Fensterman
630 Third Avenue – 5th Floor
New York, New York 10017

Courtney Berry, Associate Counsel
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Dong Soo Kim, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.16-199) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

[redacted]

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
DONG SOO KIM, M.D.

DETERMINATION
AND
ORDER

BPMC #16-199

A Notice of Hearing and a Statement of Charges, both dated October 16, 2015, were served on the Respondent's attorney who accepted service on the Respondent's behalf. (Ex. 1, p. 10-11) Steven I. Sherman, D.O., Chair, Michael N.J. Colon, Esq., and Linda A. Brady, M.D., members of the State Board for Professional Medical Conduct ("BPMC"), served as the hearing committee in this matter pursuant to Section 230(10) of the Public Health Law ("PHL"). Denise Lepicier, Esq., Administrative Law Judge ("ALJ"), served as the hearing officer.

The Department of Health appeared by Courtney Berry, Esq., and Anna Lewis, Esq. The Respondent, Dong Soo Kim, M.D., was represented by Michael S. Kelton, Esq.[1]

Evidence was received and witnesses sworn and heard. A transcript was made of these proceedings. After consideration of the entire record, the hearing committee issues this Determination and Order.

PROCEDURAL HISTORY

Respondent's Answer:	November 10, 2015
Pre-Hearing Conference:	November 16, 2015
Hearing Dates	November 23, 2015 (adjourned for

[1] Respondent was initially represented by a different attorney who withdrew for personal reasons.

	change of counsel); February 29, 2016; March 7, 2016; March 28, 2016
Witnesses for the Department:	Patient B
	Individual A
	Martha Quizhpi
Witnesses for Respondent:	Rubin Olivencia
	Janet Enny
	Marzie Nejad, M.D.
	Dong Soo Kim, M.D.
	Henry Schoen
Deliberations Held:	May 20, 2016

BACKGROUND

The State Board for Professional Medical Conduct ("BPMC") is a professional disciplinary board of the State of New York, authorized pursuant to PHL § 230, *et seq.*, to consider certain disciplinary matters brought by the New York State Department of Health. The Department of Health has jurisdiction to conduct disciplinary hearings for physicians, physician assistants, specialist's assistants, physicians working on a limited permit, and medical residents, when there is a violation of the misconduct provisions of the N.Y. Education Law ("Educ. Law").

The Respondent is charged with four specifications of misconduct in the Statement of Charges. The first and second specifications charge the Respondent with conduct in the practice of the profession evidencing moral unfitness in violation of Education Law § 6530(20) in that it is alleged that Respondent inappropriately touched one patient and one coworker. The third

specification charges willful patient harassment, abuse and/or intimidation in violation of Education Law § 6530(31) in that it is alleged that Respondent inappropriately touched a patient. The fourth specification charges a failure to maintain a record for a patient in violation of Education Law § 6530(32) in that it is alleged that Respondent failed to maintain a medical record for a patient coworker whom he examined and for whom he prescribed medication.

Respondent filed an answer to the Statement of Charges denying all the factual allegations and specifications, except those alleging the licensure of the Respondent, the fact that he and Individual A and Patient B were all employed at the Bellevue Hospital Center Dialysis Unit, and the fact that he did not maintain a medical record for Patient B. (Ex. A) A copy of the Statement of Charges is attached to this Determination and Order as Appendix 1. A copy of the Respondent's Answer is attached to this Determination and Order as Appendix 2.

FINDINGS OF FACT

The following findings of fact were made after a review of the entire record in this matter. Numbers and letters in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the hearing committee in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence.

1. The Respondent was licensed to practice medicine as a physician in the State of New York on or about January 30, 1986, upon issuance of license number 165345 by the New York State Education Department. (Ex. 2; Ex. A, p. 1)

2. The Respondent worked in the Bellevue Hospital Center in the dialysis unit from in or about 1992 to December of 2009. (T. 518, 523)

3. Individual A worked in the Bellevue Hospital Center in the dialysis unit from on or

about 1988 until the unit was closed in about August of 2011, and the Respondent admitted that he and Individual A were employed at the Bellevue Hospital Center in the dialysis unit at all times material to this matter. (T. 201; Ex. A, p. 1)

4. Patient B worked in the Bellevue Hospital Center in the dialysis unit from on or about 1992 until the dialysis unit closed, and the Respondent admitted that he and Patient B were employed at the Bellevue Hospital Center in the dialysis unit at all times material to this matter. (Ex. A, p. 1; T. 69, 204)

5. The Respondent admitted that he did not maintain a medical record for Patient B following his physical examination of her and did not record prescriptions he gave to her in a medical record. (Ex. A, p. 1; T. 66-67, 324-326, 572-575)

DISCUSSION

This case involves allegations of inappropriate touching by the Respondent of two female coworkers, one of whom was also a patient ("Patient B"). It also involves an allegation that Respondent did not maintain a medical record for Patient B whom he examined and for whom he wrote prescriptions.

Individual A testified that on December 30, 2009, there was a flood in the dialysis unit, and that, later on that day in the lounge area, the Respondent rubbed his body against her in an inappropriate fashion and restrained her by holding her wrist and not letting go. (T. 204-224) She further alleged that in January of 2010, Respondent stroked her back and left side and gestured to her to come to his office. (T. 225-227, 289-294)

With respect to Individual A the hearing committee was troubled by the differences between Individual A's testimony and the testimony of some of Respondent's witnesses. For example, Individual A testified that the December 30, 2009 flood, never extended into the lounge

area where she alleged the inappropriate touching took place. (T. 264-265, 305-309) However, Mr. Ruben Olivencia, the Supervisor of Housekeeping and Environmental Service at Bellevue Hospital Center, and Mr. Henry Schoen, the Associate Director of Building Services at Bellevue Hospital Center, both testified that the lounge area was completely flooded and that the furniture and chart racks had been moved out. (T. 389-392, 397-400, 415-416, 430, 634, 639-640, 647)

Further, Individual A testified that she reported everything concerning the alleged inappropriate contact by the Respondent to a retired coworker, Ms. Janet Enny, in January of 2010. (T. 286-288) Ms. Enny's account of what she was told was much different from Individual A's account of what she said. While Individual A alleged inappropriate physical contact on two occasions and physical restraint on one occasion, Ms. Enny testified that Individual A told her only that Respondent asked for a hug and she gave him a hug, and that on a subsequent occasion Respondent was motioning Individual A into his office. (T. 458-462; Ex. F)

Because of these discrepancies, the hearing committee unanimously determined that it was not possible to find by a preponderance of evidence that Individual A had been touched inappropriately by the Respondent. **By a unanimous vote the hearing committee found that the allegations in paragraph A, A1, A2 and A3 were not proven by a preponderance of evidence.**

Patient B alleged that there came a time when she asked the Respondent for a prescription. Both the Respondent and Patient B agreed that Respondent wrote prescriptions for Patient B on occasion. (T. 72-75, 574-575. 583-584, 621-624) Both Respondent and Patient B agreed that Respondent did not maintain a medical record for Patient B. (T. 66-67, 73, 583-584; Ex. A) Both Respondent and Patient B agreed that Respondent had examined Patient B on one occasion, although they disagreed about the date of the examination. (T. 74, 77-80, 123-125,

572-576, 621) Patient B alleged, however, that Respondent inappropriately grabbed and massaged her breast during the course of the examination and Respondent denied this. (T. 79-81, 125-127, 576) Patient B testified that she did not report the alleged sexual abuse by Respondent until after Individual A spoke with her because she was afraid that the Respondent might harm her. (T. 83-88, 131, 163-164)

Patient B also testified that her relationship with Respondent changed after this incident and that Respondent began to criticize her and shout at her in front of other staff and patients. (T. 83, 85-86, 100-105, 132-134, 154-158; Ex. B) Patient B wrote a letter of complaint about the Respondent's professional conduct towards her in May of 2009. She did not, however, mention the alleged sexual abuse in her letter. (Ex. B) Patient B did not tell anyone in authority at Bellevue Hospital Center about the incident with Respondent until after she spoke with Individual A. (T. 80, 82, 85-86; Ex. B)

Respondent's witness, Marzie Nejad, M.D., testified about an incident she had with Patient B where she felt that Patient B inappropriately failed to dialyze a patient. Dr. Nejad testified that Patient B reported that she could not put a patient on dialysis because the machine was broken, but that Dr. Nejad had checked with a technician and the machine was not broken. Dr. Nejad stated that the next morning she noted that the patient had not been dialyzed and that, for this reason, she no longer trusted Patient B in the last year that she worked with her. (T. 497-503)

Two of the committee members were very concerned about the testimony Dr. Nejad provided about Patient B's failure to dialyze a patient when her reason for not doing so was apparently untrue. These two committee members also found that because Patient B was willing to formally complain about Respondent's professional treatment of her in a letter, but failed to

mention the alleged incident of sexual abuse, that they could not fully credit her testimony. One committee member felt that Patient B was credible and that her affect was appropriate. This committee member felt that Patient B compartmentalized the sexual abuse incident from her professional life where she had witnesses to Dr. Kim's conduct and, therefore, could complain about his professional treatment of her. This committee member also felt that Patient B did not have an opportunity to address the incident Dr. Nejad described and that there may have been some explanation. **By a vote of two committee members to one, the hearing committee found that the allegation in paragraph B1 was not proven by a preponderance of evidence.**

The hearing committee was unanimous in finding that Respondent had failed to maintain a medical record for Patient B. Respondent admitted and conceded that he examined Patient B on one occasion and that he prescribed medication for her on a number of occasions without creating or maintaining a medical record for her. **By a unanimous vote, the hearing committee found that the allegations in paragraph B and B2 are sustained.**

SPECIFICATIONS OF MISCONDUCT

The first specification in the Statement of Charges charged that the Respondent engaged in conduct in the practice of medicine that evidences moral unfitness to practice medicine in violation of Education Law §6530(20) with respect to his conduct as alleged in paragraphs A, A1, A2 and A3. As the hearing committee found that the Department's evidence presented on these allegations did not rise to the level of a preponderance of the evidence, the Department has not carried its burden of proof. **The FIRST SPECIFICATION of misconduct is NOT SUSTAINED.**

The second specification in the Statement of Charges charged that the Respondent engaged in conduct in the practice of medicine that evidences moral unfitness in violation of

Education Law §6530(20) with respect to his conduct as alleged in paragraphs B, and B1. As the hearing committee found by a vote of two members to one that the Department's evidence presented with respect to paragraph B1 did not rise to the level of a preponderance of the evidence, the Department has not carried its burden of proof. **The SECOND SPECIFICATION of misconduct is NOT SUSTAINED.**

The third specification in the Statement of Charges charged the Respondent with willfully harassing, abusing, or intimidating a patient either verbally or physically in violation of Education Law §6530(31) with respect to his conduct as alleged in paragraphs B and B1. As the hearing committee found by a vote of two members to one that the Department's evidence presented with respect to paragraph B1 did not rise to the level of a preponderance of the evidence, the Department has not carried its burden of proof. **The THIRD SPECIFICATION of misconduct is NOT SUSTAINED.**

The fourth specification in the Statement of Charges charged the Respondent with failing to maintain a record for a patient which accurately reflects the evaluation and treatment of the patient in violation of Education Law §6530(32) with respect to his conduct as alleged in paragraphs B and B2. The hearing committee unanimously determined that this allegation was proven by a preponderance of the evidence. Indeed, the Respondent conceded that he examined Patient B and that he wrote prescriptions for her on multiple occasions and that he did not maintain a medical record for Patient B. (T. 621) **The FOURTH SPECIFICATION of misconduct is SUSTAINED.**

DETERMINATION AS TO SANCTION

The Hearing Committee has considered the full range of sanctions available pursuant to PHL § 230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or

partially; (3) limitation on practice; (4) revocation of the license; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) monetary penalties; (8) a course of education or training; (9) performance of public service; and, (10) probation.

The hearing committee was particularly concerned that, despite having previously been on probation pursuant to a consent order one term of which stated, "Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients," Respondent failed to maintain such a record for Patient B. (Ex. 3) Indeed, Respondent testified that he examined Patient B in the year 2000.[2] (T. 572-576, 621-622) Respondent was released from his probationary requirements under the prior consent order by letter from the Department dated June 12, 2000. Thus, by his own account, Respondent either failed to maintain a record for Patient B while he was on probation or shortly after he was finished with his probation. (T. 521-522; Ex. G) Having been disciplined previously, and having apparently not taken his discipline as seriously as he should have, the hearing committee believes a significant penalty is appropriate.

The hearing committee has determined that the appropriate sanction for Respondent's misconduct is a two-year suspension, stayed, with three years of probation and a practice monitor for three years. The Respondent must also complete a medical education course in recordkeeping, approved by the Director of the Office of Professional Medical Conduct, within the first three months of his probation.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

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[2] Patient B alleged the examination took place in or about 2007, but if the examination took place in 2007, it would still have occurred after his prior probation.

1. The first through third specifications contained in the Statement of Charges are not sustained; and

2. The fourth specification contained in the Statement of Charges is sustained; and

3. Pursuant to Public Health Law § 230-a(2)(a), Respondent's license to practice medicine shall be subject to a stayed suspension for a period of two (2) years; and

4. Pursuant to Public Health Law § 230-a(9), Respondent shall be placed on probation for a period of three (3) years as per the Terms of Probation attached hereto as Appendix 3. This probation will include the requirement that Respondent have a practice monitor for all three (3) years; and

5. Pursuant to Public Health Law § 230-a(8), Respondent shall complete, within the first three months of his probation, a course approved by the Director of the Office of Professional Medical Conduct in medical recordkeeping; and

6. This Order shall be effective on personal service on the Respondent, or seven (7) days after the date of mailing of a copy to Respondent's last known address by certified mail.

DATED: Woodmere, New York
June 8, 2016

[redacted]

STEVEN I. SHERMAN, D.O., Chair

LINDA A. BRADY, M.D.
MICHAEL N.J. COLON, ESQ.

TO:

Dong Soo Kim, M.D.
[redacted]

Michael S. Kelton, Esq.
Abrams Fensterman
630 Third Avenue – 5th floor
New York, N.Y. 10017

Courtney Berry, Associate Counsel
New York State Department of Health
Division of Legal Affairs
Bureau of Professional Medical Conduct
90 Church Street, 4th floor
New York, N.Y. 10007

APPENDIX 1

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

IN THE MATTER OF Dong Soo Kim, M.D.	STATEMENT OF CHARGES

Dong Soo Kim, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 30, 1986 by the issuance of license number 165345 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent and Individual A were both employed at Bellevue Hospital Center's Dialysis Unit, in New York, NY. Respondent engaged in inappropriate behavior with Individual A, while at work, on the following occasions:

1. On or about December 30, 2009, Respondent inappropriately rubbed his body against Individual A.
2. Respondent inappropriately held and/or pulled Individual A's wrist(s).
3. In or about January 2010, Respondent inappropriately touched Individual A and gestured towards his office.

B. Respondent and Individual B were both employed at Bellevue Hospital Center's Dialysis Unit, in New York, N.Y. Prior to 2009, Respondent wrote prescriptions for allergy medicine for Individual B. Respondent engaged in the following inappropriate conduct:

1. On an occasion prior to 2009, Respondent inappropriately touched Individual B's breast during an examination.

2. Respondent failed to keep a medical record regarding Individual B.

B.SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

1. Paragraph A and its subparagraphs.
2. Paragraph B and B1.

THIRD SPECIFICATION

PATIENT HARASSMENT, ABUSE AND/OR INTIMIDATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(31) by willfully harassing, abusing or intimidating a patient, as alleged in the facts of:

3. Paragraph B and B1.

FOURTH 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:

4. Paragraphs B and B2.

DATE:October 16, 2015
New York, New York

[redacted]

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

600 Third Avenue, 22nd Floor | New York, NY 10016-1915
Phone: 646.253.2300 Fax: 646.253.2301

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

IN THE MATTER
OF
DONG SOO KIM, M.D.

ANSWER

Respondent Dong Soo Kim, M.D. (License Number 165345), by his attorneys Bond, Schoeneck & King, PLLC, answers the Statement of Charges as follows:

Respondent admits that he was licensed by the New York State Education Department (license number 165345) to practice medicine in New York State on or about January 3, 1986.

FACTUAL ALLEGATIONS

A. With respect to Paragraph A of the Statement of Charges, Respondent denies each and every allegation of Paragraph A1, 2 and 3, except Respondent admits that, at all times material herein, he and Individual A were employed by Bellevue Hospital Center in its Dialysis Unit in New York, New York.

B. With respect to Paragraph B of the Statement of Charges, Respondent denies each and every allegation of Paragraph B1, except Respondent admits that, at all times material herein, he and Individual B were employed by Bellevue Hospital Center in its Dialysis Unit in New York, New York and, as to paragraph B2, Respondent admits that he did not establish a medical record in the course of his courtesy examination of Individual B.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

MORAL UNFITNESS

1. Respondent denies each and every allegation of Paragraph A and its subparagraphs of the First Specification Of Charges, except Respondent admits that, at all times material herein, he and Individual A were employed by Bellevue Hospital Center in its Dialysis Unit in New York, New York.

2. Respondent denies each and every allegation of Paragraph B and B1 of the Second Specification Of Charges, except Respondent admits that, at all times material herein, he and Individual B were employed by Bellevue Hospital Center in its Dialysis Unit in New York, New York.

THIRD SPECIFICATION

PATIENT HARASSMENT, ABUSE AND/OR INTIMIDATION

3. Respondent denies each and every allegation of Paragraph B and B1 of the Third Specification Of Charges, except Respondent admits that, at all times material herein, he and Individual B were employed by Bellevue Hospital Center in its Dialysis Unit in New York, New York.

FOURTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

4. With respect to Paragraphs B and B2, Respondent again denies each and every allegation of Paragraph B1, except Respondent admits that, at all times material herein, he and Individual B were employed by Bellevue Hospital Center in its Dialysis Unit in New York, New York, and, as to paragraph B2, Respondent admits that he did

not establish a medical record in the course of his courtesy examination of his fellow employee, Individual B.

Dated: November 10, 2015

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

By: [redacted]
Michael I. Bernstein
Attorneys for Respondent
600 Third Avenue, 22nd Floor
New York, New York 10016-1915
Telephone: (646) 253-2310
mbernstein@bsk.com

APPENDIX 3

TERMS OF PROBATION

1. Respondent's conduct shall conform to the moral and professional standards of conduct in his profession and in governing law. Any act of professional misconduct by Respondent as defined by New York Education Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York Public Health Law § 230 (10) or (19), or both.
2. Respondent shall remain in continuous compliance with all requirements of New York Education 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 New York Education Law § 6502(4) to avoid registration and payment of fees.
3. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, at least every six months and as otherwise requested, or within thirty days of any change in the information, the following information in writing:
    a. a full description of the Respondent's employment and practice;
    b. all professional and residential addresses and telephone numbers within and outside of New York State;
    c. any and all information concerning investigations, arrests, charges, convictions or disciplinary actions by any local, state, or federal agency;
    d. any and all information concerning investigations, terminations, or disciplinary matters by any institution or facility.
4. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, copies of all applications relating to the practice of medicine, including but not limited to, privileges, insurance, and licensure, in any jurisdiction, concurrent with their submission.
5. Respondent shall cooperate fully with, and will respond within two weeks to, OPMC requests to provide written periodic verification of Respondent's compliance with these

terms of probation. Upon the Director of OPMC's request, Respondent shall meet personally with a person designated by the Director.

6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty-day period. Respondent shall then notify the Director at least fourteen days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume, and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose.
7. The Director of OPMC, or his/her designee, may review Respondent's professional performance. This review may include but shall not be limited to:
    a. A review of office records, patient records, hospital charts, and/or electronic records; and
    b. Interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. 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.
9. Within thirty days of the effective date of this Determination and Order, Respondent shall practice only when monitored by a licensed physician ("Practice Monitor") who is board certified in an appropriate specialty. The Practice Monitor shall be proposed by Respondent and must be approved in writing by the Director of OPMC.
    a. Respondent shall make available to the Practice Monitor any and all records or access to the practice as requested by the Practice Monitor, including on-site observation. The Practice Monitor shall visit Respondent's medical practice on a random unannounced basis at least monthly and shall examine a selection of no less than 20 patient records maintained by Respondent. The Practice Monitor shall determine whether Respondent's charting is conducted in accordance with generally accepted standards of professional medical care. The Practice Monitor

shall report any perceived deviation from accepted standards of medical care or refusal to cooperate with the Practice Monitor within 24 hours to OPMC.

b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the Practice Monitor.

c. Respondent shall cause the Practice Monitor to report quarterly, in writing, to the Director of OPMC.

d. Respondent shall maintain medical malpractice insurance coverage with limits no less than $2 million per occurrence and $6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC within 30 days after the date of this Determination and Order.

10. Within three months of the effective date of this Determination and Order, Respondent shall enroll in and successfully complete a course of Continuing Medical Education in the area of medical recordkeeping. This course is subject to the prior written approval of the Director of the Office of Professional Medical Conduct and courses taken in the past may not be used to fulfill this requirement.

11. Respondent shall comply with these Terms of Probation, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or a violation of these terms, the Director of OPMC and/or the Board for Professional Medical Conduct may initiate a violation of probation proceeding, and/or any other proceeding authorized by law, against the Respondent.