



Department of Health

ANDREW M. CUOMO
Governor

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

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

August 30, 2017

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

David Hershan, M.D.



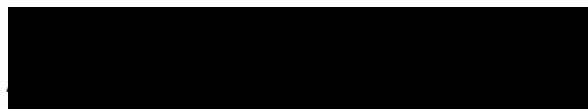
Re: License No. 172940

Dear Dr. Hershan:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 17-245. This order and any penalty provided therein goes into effect September 6, 2017.

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

Sincerely,



Robert A. Catalano, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Joseph M. Gorrell, Esq.
Brach Eichler, LLC.
101 Eisenhower Parkway
Roseland, New Jersey 07068

IN THE MATTER
OF
DAVID HERSHAN, M.D.

MODIFICATION
ORDER

Upon the proposed Application for a Modification Order of DAVID HERSHAN, M.D.
(Respondent), which is made a part of this Modification Order, it is agreed to and

ORDERED, that the attached Application, and its terms, are adopted and SO
ORDERED, and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board,
either

- by mailing of a copy of this Modification Order, either by first class to Respondent
at the address in the attached Application or by certified mail to Respondent's
attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney,
whichever is first.

SO ORDERED.

DATE: 8/29/2017


ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
DAVID HERSHAN, M.D.

MODIFICATION
AGREEMENT
AND
ORDER

DAVID HERSHAN, M.D., represents that all of the following statements are true:

That on or about November 9, 1987, I was licensed to practice as a physician in the State of New York, and issued License No. 172940 by the New York State Education Department.

My current address is

and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I am currently subject to BPMC Order # 16-334 (Attachment I) (henceforth "Original Order"), which went into effect on October 18, 2016, and was issued upon an Application For Consent Order signed by me and adopted by the Original Order. I hereby apply to the State Board for Professional Medical Conduct for an Order (henceforth "Modification Order"), modifying the Original Order, as follows:

The sanction imposed in the Original Order was:

- a three month actual suspension of license,
- a permanent license limitation restricting my employment to an Article 28 facility (hospitals only),
- a \$5,000 fine, and

- probation for 60 months (to commence upon the expiration of the period of actual suspension, subject to the terms in Exhibit "B" of the Original Order) or until I satisfy the terms of the Judgment of the United States District Court, Southern District of New York, filed on July 16, 2016.

The sanction imposed shall be modified to read as follows:

- So much of the sanction as imposes a permanent license limitation restricting my employment to an Article 28 facility (hospitals only) shall be modified to permit me to engage in medical practice outside an Article 28 hospital, under the following conditions:
 1. Respondent may practice anesthesiology in an accredited office-based surgery setting within the meaning of Public Health Law 230-d or such other practice setting outside an Article 28 hospital with the express prior written approval of the Director of the Office of Professional Medical Conduct. Respondent shall submit a written request to the Director of OPMC, specifying all proposed non-Article 28 hospital practices, locations, employers, and practice responsibilities, and the Director shall exercise reasonable discretion with regard to Respondent's written proposal(s).
 2. Respondent shall be precluded from billing directly for medical services, whether performed by himself or others. Accordingly,

Respondent's proposal (referenced in paragraph 1, above) shall include an explanation of the proposed process for billing for Respondent's medical services. Respondent's proposal shall also include a signed Acknowledgement by the practice's principal, chief financial officer, or other appropriate individual responsible for the practice's billing processes ("Principal.") In the Acknowledgement, the Principal shall specifically affirm the following:

- familiarity with the terms of this Order;
- knowledge of Respondent's preclusion from billing directly for medical services, whether performed by himself or others, and
- the accuracy of Respondent's explanation, in his proposal to the Director of OPMC, of the proposed process for billing for Respondent's medical services.

Respondent shall be under a continuing obligation to cause the Principal to notify the Director of OPMC immediately of any violation of the terms of this Order, and of any change in billing processes involving Respondent's participation.

All remaining Terms and Conditions will continue as written in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance by the Board of this Application, I

knowingly waive my right to contest the Original Order or the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application.

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

DATE

8/16/17

DAVID HERSHAN, M.D.
RESPONDENT

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

DATE 8/16/17


JOSEPH GORRELL, ESQ.
Attorney for Respondent

DATE August 17, 2017


MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE 8/28/17


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

ATTACHMENT I



Department
of Health

ANDREW M. CUOMO
Governor

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

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

October 11, 2016

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

David Hershan, M.D.


RE: License No. 172940

Dear Dr. Hershan:


Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 16-334. This Order and any penalty provided therein goes into effect October 18, 2016.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 2784
Empire State Plaza
Albany, New York 12237

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,


Henry Spector, M.D.
Acting Executive Secretary
Board for Professional Medical Conduct

cc: Mr. Joseph M. Gorrell, Esq.
Brach and Eichler, LLC
5 Penn Plaza, 23rd Floor
New York, New York 10001

Enclosure

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

IN THE MATTER
OF
DAVID HERSHAN, M.D.

BPMC No. 16 334

CONSENT
ORDER


Upon the application of (Respondent) DAVID HERSHAN, 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: 10/08/2016


ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
DAVID HERSHAN, M.D.

CONSENT
AGREEMENT

DAVID HERSHAN, M.D., represents that all of the following statements are true:

That on or about November 9, 1987, I was licensed to practice as a physician in the State of New York, and issued License No. 172940 by the New York State Education Department.

My current address is [REDACTED], and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one Specification of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I plead guilty to the Specification, in full satisfaction of the charges against me, and agree to the following penalties:

Pursuant to New York Public Health Law §230-a(2), my license to practice medicine in New York State shall be suspended for three (3) months.

Pursuant to New York Public Health Law §230-a(3), my license to practice medicine in New York State shall be permanently limited so as to restrict employment to an Article 28 facility (hospitals only).

Pursuant to New York Public Health Law §§230-a(7) and (9), I shall be subject to a fine in the amount of five thousand (\$5,000.00) dollars, to be paid in full within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 2784
Empire State Plaza
Albany, New York 12237

In making such payment, Respondent shall indicate the order number of this Order both on the payment check submitted and on the cover letter accompanying payment. Additionally, Respondent shall simultaneously mail a photocopy of the check and cover letter to.

Physician Monitoring Program
Office of Professional Medical Conduct
Riverview Center
150 Broadway, Suite 355
Albany, New York 12204-2719.

Pursuant to New York Public Health Law §230-a(9), I shall be placed on probation for the longer of sixty (60) months, subject to the terms set forth in

attached Exhibit "B" or until I satisfy the terms the Judgment of the United States District Court, Southern District of New York, filed on July 16, 2016, which includes Supervised Release for 3 years, 700 hours of community service in the medical field for each year of supervision, and the payment of a \$100 assessment, \$7,500 fine, and \$1,136,847.79 restitution, pursuant to a payment schedule (20% of my gross monthly revenues during the 3 years' Supervised Release). The probation term shall commence upon the expiration of my actual suspension from the practice of medicine in New York.

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

That Respondent shall comply with each and every penalty imposed by this Order pursuant to New York Public Health Law §230-a; and

That 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. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall remain in continuous compliance with all requirements of New York Public Health Law §2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall: report to the department all information required by the Department to develop a public physician profile for the licensee; continue to notify the department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the department's secure web site or on forms prescribed by the department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to New York Public Health Law §230, shall constitute professional misconduct as defined in New York Education Law §6530(21) and New York Education Law §6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in New York Public Health Law §230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand,

probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

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

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

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

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by New York Education 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 New York 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 Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by

certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

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

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

DATE: 9/26/16

[REDACTED]

DAVID HERSMAN, M.D.
Respondent

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

Brach Eichler, LLC

DATE: 9/30/16

By [REDACTED]

JOSEPH M. CORREY, ESQ.
Attorney for Respondent

DATE: 10/3/16

[REDACTED]
JEFFREY J. CONKLIN, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 10/5/16

[REDACTED]
KENTH W. SERVIS
Director
Office of Professional Medical Conduct

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

IN THE MATTER

OF

DAVID HERSHAN, M.D.

STATEMENT

OF

CHARGES

DAVID HERSHAN, M.D., the Respondent, was authorized to practice medicine in New York State on November 9, 1987, by the issuance of license number 172940 by the New York State Education Department.

FACTUAL ALLEGATIONS

A On or about July 12, 2016, in the United States District Court, Southern District of New York, Respondent was convicted of Conspiracy to Commit Health Care Fraud, in violation of Section 18 U.S.C 1349, a felony, based upon a plea of guilty. Respondent was sentenced to time served; 3 years of Supervised Release; 700 hours of community service in the medical field for each year of supervision, \$7,500.00 fine; \$1,136,847.79 restitution; and \$100.00 assessment.

SPECIFICATIONS OF MISCONDUCT

Respondent is charged with committing professional misconduct as defined in New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York State law, as alleged in the facts of the following:

1. The facts in Paragraph A.

DATED: October 3, 2016
Albany, New York


Michael A. Hiser, Esq.
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Terms of Probation

- 1) Respondent's conduct shall conform to moral and professional standards of conduct and 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(19).
- 2) Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 3) Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).
- 4) The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 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 30 day period. Respondent shall then notify the Director again at least 14 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 as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
- 5) The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 6) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education,

training and oversight of all office personnel involved in medical care, with respect to these practices.

- 7) 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.
- 8) Respondent shall enroll in and successfully complete a continuing education program in the area of professional ethics. 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.
- 9) Respondent shall comply with this Consent Order and all its terms, 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 may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent