



Department of Health

ANDREW M. CUOMO
Governor

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

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

November 6, 2018

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Noah Gutierrez, M.D.



RE: License No. 273279

Dear Dr. Gutierrez:

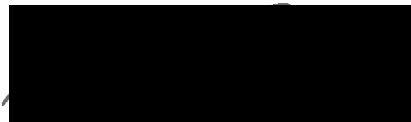
Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 18-249. This Order and any penalty provided therein goes into effect November 13, 2018.

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, 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

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

BPMC No. 18-249

IN THE MATTER
OF
NOAH GUTIERREZ, M.D.

CONSENT
ORDER

Upon the application of (Respondent) NOAH GUTIERREZ, 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: 11/05/2018


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
NOAH GUTIERREZ, M.D.

CONSENT
AGREEMENT

NOAH GUTIERREZ, M.D., represents that all of the following statements are true:

That on or about December 20, 2013, I was licensed to practice as a physician in the State of New York, and issued License No. 273279 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 or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I shall agree not to contest the allegations, in full satisfaction of the charges against me, and agree to the following penalty:

- Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.

- Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of \$5,000.00, 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.

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 N.Y. Pub. Health Law § 230-a.

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ 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 N.Y. Educ. 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 N.Y. Pub. 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 N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. 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 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 N.Y. Pub. 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 or other confidential information, 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 N.Y. Pub. 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 10/31/18


NOAH GUTIERREZ, M.D.
RESPONDENT

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

DATE: 10/31/18


POOJA A. RAWAL
Senior Attorney
Bureau of Professional Medical Conduct

DATE: 11/1/18


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

IN THE MATTER

OF

NOAH GUTIERREZ, M.D.

STATEMENT

OF

CHARGES

NOAH GUTIERREZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 20, 2013, by the issuance of license number 273279 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. New York Public Health Law ("PHL") Article 29-D § 2995-a, effective on or about October 6, 2000, requires the New York State ("NYS") Department of Health ("DOH") to collect information from NYS licensed physicians to create individual profiles on the licensee (physician profile) in a format to be made available to the public. Physicians were required to provide the DOH with specific information in a time and manner determined by the DOH.

On or about November 3, 2008, PHL § 2995-a was amended to, among other things, require physicians to update their physician profiles within the six months prior to the expiration date of their registration with the NYS Education Department ("NYSED"). Pursuant to NY Education Law § 6524(11), also effective on or about November 3, 2008, physicians could not re-register with the NYSED unless they attested under the penalties of perjury that they had updated their physician profile within six months of their re-registration application.

On or before November 1, 2011, in compliance with NY Education Law § 6524(11), the NYSED's re-registration application process started requiring physicians applying for re-registration to attest, under the penalties of perjury and as a condition of their re-registration application, that they had updated their physician profiles in compliance with PHL § 2995-a. Physicians were also required to acknowledge that any misrepresentation, or false or misleading information made in connection with their re-registration application may be cause for disciplinary action against them.

B. Respondent was registered with the NYSED between December 20, 2013, and November 30, 2015. Respondent prepared and/or submitted an online re-registration application to the NYSED on or about January 13, 2016, for the registration period of December 1, 2015, through July 31, 2017. Pursuant to PHL § 2995-a(4), Respondent was required to update his physician profile within the six months prior to the expiration of the registration period (November 30, 2015). As of August 30, 2018, Respondent has failed to complete and/or submit his initial physician profile information as required by PHL § 2995-a and failed to update his physician profile as required by PHL § 2995-a(4). Respondent, by submitting the January 13, 2016 re-registration application, attested under the penalties of perjury that he had updated his physician profile in compliance with PHL § 2995-a(4). Respondent's January 13, 2016 re-registration application contained a false statement, Respondent knew the statement was false, and Respondent intended to mislead through the false statement.

C. Respondent prepared and/or submitted an online re-registration application to the NYSED on or about July 28, 2017, for the registration period of August 1, 2017, through July 31, 2019. Pursuant to PHL § 2995-a(4), Respondent was required to update his physician profile within the six months prior to the expiration of the registration period (July 31, 2017). As of August 30, 2018, Respondent has failed to complete and/or submit his initial physician profile information as required by PHL § 2995-a and failed to update his physician profile as required by PHL § 2995-a(4). Respondent, by submitting the July 28, 2017 re-registration application, attested under

the penalties of perjury that he had updated his physician profile in compliance with PHL § 2995-a(4). Respondent's July 28, 2017 re-registration application contained a false statement, Respondent knew the statement was false; and Respondent intended to mislead through the false statement.

SPECIFICATION OF CHARGES
FIRST AND SECOND SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraphs A and B; and/or
2. Paragraphs A and C.

THIRD AND FOURTH SPECIFICATIONS

FAILURE TO COMPLY

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16) by willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine, as alleged in the facts of:

3. Paragraphs A and B; and/or

4. Paragraphs A and C.

FIFTH THROUGH EIGHTH SPECIFICATIONS

**FAILURE TO FILE A REPORT REQUIRED BY LAW AND/OR WILLFULLY MAKING
OR FILING A FALSE REPORT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(12) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

5. Paragraphs A and B (failing to file a report required by law); and/or
6. Paragraphs A and C (failing to file a report required by law); and/or
7. Paragraphs A and B (willfully making or filing a false report); and/or
8. Paragraphs A and C (willfully making or filing a false report).

DATE: August 30, 2018
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct