

**These charges are only allegations which  
may be contested by the licensee in an  
Administrative hearing.**

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

IN THE MATTER  
OF  
NOAH GUTIERREZ, M.D.

NOTICE  
OF  
HEARING

TO: NOAH GUTIERREZ, M.D.  


PLEASE TAKE NOTICE:

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 November 1, 2018, at 10:00 a.m., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719<sup>1</sup>, and at such other adjourned dates, times and places as the committee may direct.

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. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses

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<sup>1</sup> For GPS purposes, enter "Menands", not "Albany".

and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here \_\_\_\_\_

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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, (henceforth "Bureau of Adjudication"), (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. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose

name appears below. 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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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 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 OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a.  
YOU ARE URGED TO OBTAIN AN ATTORNEY TO  
REPRESENT YOU IN THIS MATTER.

DATE: August 30, 2018  
Albany, NY

  
MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be directed to:

Pooja A. Rawal  
Senior Attorney  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

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