



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

March 23, 2022

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

James T. Keefe, M.D.

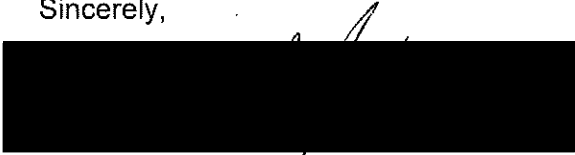

Re: License No. 263895

Dear Dr. Keefe:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 22-049. This order and any penalty provided therein goes into effect March 30, 2022.

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,


Michael S. Jakubowski, M.D.
Interim Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Amy T. Kulb, Esq.
Jacobson Goldberg & Kulb, LLP.
585 Stewart Avenue, Suite 500
Garden City, New York 11530

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

IN THE MATTER
OF
JAMES T. KEEFE, M.D.

BPMC No. 22-049

CONSENT
ORDER

Upon the application of James T. Keefe, M.D. (Respondent) 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: 3/22/2022


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 T. KEEFE, M.D.**

**CONSENT
AGREEMENT**

James T. Keefe, M.D., represents that all of the following statements are true:

That on or about January 4, 2012, I was licensed to practice as a physician in the State of New York, and issued License No. 263895 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 agree not to contest the allegations in full satisfaction of the charges against me, and agree to the following penalty:

My license shall be suspended for an indefinite period but no less than 12 months effective immediately upon my release from incarceration. I shall be subject to a condition that I comply with attached Exhibit "C" ("Requirements for Closing a Medical Practice

Following Medical License Revocation, Surrender, Limitation or Suspension.") During the period of suspension, I shall be precluded from reliance upon my license to practice medicine to exempt me from the license, 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.

My license to practice medicine shall remain suspended pending my providing proof of fitness to return to the active practice of medicine. After a minimum of 12 months of actual suspension, I may petition the Board for a Modification Order staying the indefinite suspension of my license as further set forth in Exhibit "B".

I understand and agree:

That any Modification Order the Board may issue, in the exercise of its reasonable discretion, may include terms of probation, and/or further conditions on my practice.

That the Board will exercise its reasonable discretion upon my petition for a modification Order through a Committee on Professional Conduct after a proceeding in which I have met a burden of proof and persuasion, as further set forth in attached Exhibit "B";

That the Committee's exercise of discretion shall not be reviewable by the Administrative Review Board;

Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of five (5) years, subject to the terms set forth in attached Exhibit "B." The period of

probation shall not commence until the suspension has been lifted and the Board has determined that Respondent has proven fitness to return to the practice of medicine and has proven clinical competency to practice subject to any other terms and conditions which the Director may impose.

Pursuant to N.Y. Pub. Health Law § 230-a(3), my license to practice medicine in New York State shall be permanently limited to preclude prescribing, dispensing, administering, and/or ordering of controlled substances should I return to the active practice of medicine; and

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; and
- That prior to engaging in the active practice of medicine under Respondent's New York medical license, Respondent must successfully complete a clinical competency assessment (CCA) performed by a program for such assessment subject to the Director's written approval as further set forth in Attachment "D".
- That Respondent shall also comply with such terms and/or conditions of practice including but not limited to any remediation, retraining or education, if any, consistent with the recommendations in the CCA report and shall

provide written documentation, acceptable to the Director of OPMC, of such compliance;

- That Respondent may not commence any active practice of medicine until the preceptor, if applicable, toxicology monitor, therapy monitor and practice supervisor have been approved in writing by the Director of OPMC following the Director's receipt of the CCA report; and
- That Respondent shall be subject to any extension, reimposition and/or further conditions and/or terms of probation as may be imposed by Director, in the Director's sole reasonable discretion, as the Director deems necessary based upon all relevant facts and circumstances then known to OPMC, including, but not limited to, those related to the OPMC investigation of Respondent, the results and recommendations of the CCA, the Preceptor's reports, and Respondent's practice in the future, as deemed by the Director to be necessary to protect the public health. Respondent, by making this Application, stipulates that the Director shall be so authorized; and
- 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 the Licensee's information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to the Licensee's 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 OPMC in its administration and enforcement of this Consent Order and in its investigation of all matters concerning Respondent. Respondent shall respond promptly to all OPMC

requests for written periodic verification of Respondent's compliance with the terms of this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, and shall promptly provide OPMC with 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).

If I am charged with professional misconduct in the future, I hereby stipulate and agree that this Application and Consent Order, and/or related Modification Orders, shall be admitted into evidence in that proceeding as part of the Department's case-in-chief, at the sole discretion of the Department.

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 Consent Order shall take effect upon issuance by the Board, either by mailing of a copy of the Consent

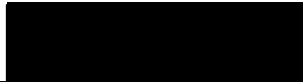
Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

This Consent Order, this Consent 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 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 I ask that the Board adopt this Consent Agreement.

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 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 3/9/22



JAMES T. KEEFE, M.D.
RESPONDENT

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

DATE: 3/2/2022

[Redacted Signature]

AMY T. KULB, ESQ.
Attorney for Respondent

DATE: 3/15/22

[Redacted Signature]

PAUL TSUI
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 3/16/2022

[Redacted Signature]

SHELLY WANG BANDAGO
Director
Office of Professional Medical Conduct

Exhibit A

IN THE MATTER

OF

JAMES T. KEEFE, M.D.

STATEMENT

OF

CHARGES

James T. Keefe, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 4, 2012, by the issuance of license number 263895 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 5, 2020, in the United States District Court for the Western District of New York, the Respondent was convicted upon a plea of guilty to conspiracy to possess with intent to distribute, and to distribute, oxycodone, hydrocodone, and amphetamine, in violation of Title 21 United States Code, §§846, 841(a)(1), and 841(b)(1)(C). The Respondent was sentenced on or about May 27, 2021, to a period of incarceration of 60 months, five years of post-release supervision, restitution in the amount of \$2,651.85, and a \$100.00 assessment.

SPECIFICATION OF CHARGES

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts of Paragraph A.

DATE: October 18, 2021
Albany, New York


JEFFREY J. CONKLIN
Acting Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Termination of Suspension

- 1) The suspension of Respondent's license shall be terminated only after Respondent makes a showing to the satisfaction of a Committee on Professional Conduct (Committee) of the State Board for Professional Medical Conduct (Board) that Respondent has successfully complied with or successfully completed a course of therapy and ongoing evaluation and is no longer incapacitated for the practice as a physician, and a Committee makes a determination that Respondent is both fit and clinically competent to practice as a physician. Respondent shall provide the Office of Professional Medical Conduct (OPMC) with a proposed treatment plan for advice as to whether it is generally appropriate; however, the determination of successful compliance with or completion of a course of therapy, and the determination that Respondent is no longer incapacitated for the active practice as a physician, shall be made solely by the Committee.

- 2) After Respondent completes at least 12 months of suspension pursuant to the terms of this Consent Order, and upon Respondent's request, a Committee shall be convened to hear and evaluate Respondent's showing, as set forth in paragraph 1 above. The Board will make reasonable attempts to convene a Committee within 90 days of Respondent's request (although in no event shall it be convened prior to completion of 12 months of suspension); however, Respondent's request shall not be perfected until the Director of OPMC receives all the required documentation, and complies with all the Conditions, set forth in paragraph 3 below. The Board shall determine the procedural nature of the proceeding through the exercise of the Director of OPMC's reasonable discretion upon consultation with Counsel, Bureau of Professional Medical Conduct (Counsel). Proceedings before a Committee shall not be in the nature of a hearing pursuant to N. Y. Pub. Health Law § 230, but shall instead be informal and intended only to address any facts, evidence, information, circumstances, or issues relating to the advisability of terminating Respondent's license suspension. The Committee shall be given access to evidence including, but not limited to:
 - a) Any evidence pertaining to Respondent's compliance with the conditions imposed.

 - b) Any evidence that the Director or Counsel deems appropriate.

- 3) Upon requesting that a Committee be convened, pursuant to paragraph 2, Respondent shall provide the Director of OPMC with the following:

- a) The signed acknowledgment and curriculum vitae from the proposed toxicology monitor referred to in paragraph 5f.
- b) The signed acknowledgment and curriculum vitae from the proposed Practice Supervisor referred to in paragraph 5g.
- c) The signed acknowledgment and curriculum vitae from the proposed Therapist referred to in paragraph 5h.
- d) Certified true and complete copies of all evaluation and treatment records relating to Respondent's substance abuse/dependence, psychological, psychiatric and/or mental health treatment, whether in an in-patient, out-patient, after-care or consultation setting; the certified records shall be forwarded directly to OPMC by the treatment providers, facilities and evaluators. The records shall reflect all treatment and evaluation provided, and shall include the results of all tests conducted to evaluate Respondent's fitness and clinical competence to practice medicine, whether the treatment, evaluation and testing occurred before, or while, the suspension was in effect.
- e) Documentation of Respondent's participation in the program(s) of the Committee for Physicians' Health of the Medical Society of the State of New York or other equivalent program(s). Documentation shall include but not be limited to verification of compliance and results of forensically valid alcohol/drug screening.
- f) Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records; these waivers shall comply with the requirements of federal confidentiality laws and regulations, including but not limited to: HIPAA, Public Law 104-191, et seq., and the laws governing confidentiality of substance abuse records, at 42 U.S.C. § § 290dd-3 and ee-3 and 42 C.F.R, Part 2.
- g) A current, independent, in-depth chemical dependency and psychiatric evaluation by a board-certified psychiatrist specializing in addiction medicine.
- h) Upon request of the Director of OPMC, Respondent shall attend, participate in, and cooperate with an interview with designated personnel from the OPMC.

Provision of the documents listed in this paragraph shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

4) At least 14 days before the scheduled date of the proceeding referred to in paragraph 2, Respondent shall provide OPMC with the following:

- a) Certified true and complete copies of records updating treatment and alcohol/drug screening since the date of the original submissions referred to in paragraph 3d.

Submission of the evidence listed in this paragraph shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

FITNESS – TERMS OF PROBATION

5) If the Chair of the Committee issues an Order finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice medicine, and therefore terminates the suspension of Respondent's license, the Order shall further impose a period of probation, pursuant to N.Y. Pub. Health Law § 230-a, during which Respondent's practice as a physician shall be subject to conditions imposed for a period of no less than five years. The minimum conditions shall include the following:

- a) Respondent shall be required to comply with the terms of a continuing after-care treatment plan addressing the major problems associated with Respondent's illness.
- b) Respondent shall remain active in self-help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous, and Caduceus.
- c) Respondent shall notify all treating health care providers of Respondent's history of substance abuse. Respondent shall advise OPMC of any controlled or mood-altering substance abuse given or prescribed by treating health care professionals.
- d) At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board-certified psychiatrist or other licensed mental health practitioner designated by the Director. This practitioner shall report to the Director regarding Respondent's condition and Respondent's fitness or incapacity to practice as a physician.
- e) No more than 30 days after the effective date of the Order, Respondent shall not be permitted to practice medicine except when monitored by qualified health care professional monitors: a Toxicology Monitor, a Practice Supervisor, and a Therapist, proposed by Respondent and subject to the Director of OPMC's written approval. No more than 30

days after learning that an approved monitor is no longer willing or able to serve or no more than 30 days after having been notified by the Director that a monitor has been discharged for cause, which shall include but not be limited to the inadequacy of the monitor's reports and/or performance, Respondent shall have an approved successor in place, subject to the Director's written approval. Upon approval, the new monitor(s) shall perform the duties described in Paragraphs (f)-(h) below. Regardless of the reason necessitating a replacement, if the Director does not approve Respondent's proposed new monitor, Respondent shall immediately cease the practice of medicine, unless notified by the Director, in writing, of an extension, which may be granted at the Director's discretion. In that event, Respondent shall propose another monitor, which the Director has 30 days to approve or disapprove until a replacement monitor is accepted. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

- i) Respondent shall ensure that the monitors are familiar with Respondent's history of substance abuse and with the terms of this Order. Respondent shall cause the monitors to report and deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
- f) Respondent's sobriety will be monitored by a health care professional proposed by Respondent and approved, in writing, by the Director of OPMC ("Toxicology Monitor"). The Toxicology Monitor shall not be a personal friend. The Toxicology Monitor shall be familiar with Respondent's history of chemical dependence, with this suspension and with the terms of probation to be set forth. The Toxicology Monitor shall acknowledge willingness to comply with the monitoring terms by executing the acknowledgment provided by OPMC.
 - i) Respondent shall remain free from alcohol and all other mood altering substances other than those prescribed for Respondent's treatment by a licensed health care professional aware of Respondent's history of chemical dependency and mental illness. Respondent shall not self-prescribe any medications.
 - ii) The Toxicology Monitor shall regularly see Respondent but no less than twice during each month.
 - iii) The Toxicology Monitor shall direct Respondent to submit to random, unannounced, observed tests of Respondent's blood, breath, hair, and/or urine for the presence of drugs and/or alcohol ("drug screen") or at the request of any other monitor. The

monitoring shall be on a random, unannounced, directly-observed, 7-day-a-week, 24 hour-a-day basis. Respondent shall report for a drug screen within 4 hours of being contacted by a monitor. The monitor shall report to OPMC immediately if at any time a test is positive or is refused or delayed by Respondent. Respondent shall avoid all substances that may cause positive urine drug screens such as poppy seeds, mouthwash, cough medicine, etc. unless recommended by a health care provider. Any positive result shall be considered a violation of probation and shall constitute a violation of the terms of this Order.

- iv) Respondent shall meet regularly with the Toxicology Monitor. During the first 12 months of monitoring, Respondent shall cause the Toxicology Monitor to obtain drug screens at a frequency of no less than 6 times per month. If Respondent is compliant throughout the first 12-month period, subsequent drug screens shall be obtained at a frequency to be proposed by the Toxicology Monitor and approved by OPMC.
- v) The Toxicology Monitor shall report to OPMC any non-compliance with the imposed conditions.
- vi) Respondent shall ensure that the Toxicology Monitor submits quarterly reports to OPMC certifying Respondent's compliance, or detailing Respondent's failure to comply, with each of the conditions imposed. The reports shall include forensically valid results of all drug screens performed and an assessment of self-help group (e.g. AA/NA/Caduceus) attendance and 12-step progress.
- g) Respondent shall practice only when supervised by a licensed physician ("Practice Supervisor") proposed by Respondent and approved, in writing, by the Director of OPMC. The Practice Supervisor shall be familiar with Respondent's history of impairment and with the Order and its conditions. The Practice Supervisor shall supervise Respondent's compliance with the conditions of practice imposed by the Order. The Practice Supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC and shall be in a position to regularly observe and assess Respondent's medical practice. The Practice Supervisor shall oversee Respondent's compliance with the terms of practice imposed by the Order and Respondent's prescribing, administering, dispensing, inventorying, wasting and disposal of controlled substances. The Practice Supervisor shall acknowledge willingness to comply with the supervision terms by executing the acknowledgment provided by OPMC.

- i) Respondent shall cause the Practice Supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice and prescribing practices, any unexplained absences from work, and certifying Respondent's compliance with each condition imposed, or detailing Respondent's failure to comply with each term imposed.
 - ii) The Practice Supervisor shall report any suspected impairment, inappropriate behavior, questionable medical practices, possible misconduct, or violation by Respondent of any of the terms of this Order to OPMC.
- h) Respondent shall continue in treatment with a health care professional or program ("Therapist") proposed by Respondent and approved, in writing, by the Director of OPMC, for as long as the Therapist determines it is necessary.
 - i) Respondent shall cause the Therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan, or detailing Respondent's failure to comply. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Therapist.
 - ii) Respondent shall cause the Therapist to report to OPMC immediately if Respondent is non-compliant with the treatment plan, demonstrates any significant pattern of absences, leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse. Respondent shall cause the Therapist to notify OPMC, in writing, of any termination of treatment approved by the Therapist, no less than 30 days prior to such termination.
 - iii) The Therapist shall acknowledge willingness to comply with the reporting requirements with respect to treatment by executing the acknowledgment provided by OPMC.
- i) Licensee shall provide the Director of OPMC with, and ensure to keep current and effective, fully executed waivers of patient confidentiality concerning any prior or prospective evaluation and treatment records; these waivers shall comply with the requirements of federal confidentiality laws and regulations, including but not limited to: HIPAA, Public Law 104-191, et seq., and the laws governing confidentiality of substance abuse records, at 42 U.S.C. § § 290dd-3 and ee-3 and 42 C.F.R, Part 2.

- 6) At the direction of the Director of OPMC, Respondent shall submit to evaluations by a board-certified psychiatrist, licensed mental health practitioner or other health care professional or program designated by the Director ("Evaluator"). Respondent shall provide the Evaluator with a copy of this Order and copies of all previous treatment records. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Evaluator. The Evaluator shall report to the Director regarding Respondent's condition and fitness or capacity to practice medicine. Respondent shall comply with all treatment recommendations based upon the evaluation; failure to comply with such treatment recommendations shall constitute professional misconduct.
- 7) Respondent shall enroll, or continue enrollment, in the Committee for Physician Health (CPH) and shall engage in a contract with CPH that defines the terms, conditions and duration of Respondent's recovery program. Respondent shall comply with the contract. Respondent shall give written authorization for CPH to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract and this Order, including full access to all records maintained by CPH with respect to Respondent.
 - a) Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's impairment is not substantially alleviated by treatment.
 - b) Respondent shall cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.
- 8) The terms set forth in paragraphs 5, 6 and 7 are the minimum probation terms related to fitness to practice to be imposed on Respondent upon the termination of Respondent's license suspension, and other terms may be added by the Committee. All compliance costs shall be Respondent's responsibility. Respondent's failure to comply with any condition imposed at the time of suspension termination may result in disciplinary action against Respondent with charges of professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law § 6530(29).
- 9) If a Committee denies a petition by Respondent for license suspension termination, Respondent shall be barred from requesting that a Committee be convened to hear a petition for license suspension termination for 9 months from the date of the denial.

STANDARD TERMS OF PROBATION

10) In addition to the terms set out in paragraphs 5, 6 and 7, and any other terms added by the Committee, upon the termination of Respondent's license suspension, Respondent shall also be subject to the following standard terms of probation:

- a) Respondent's conduct shall conform to moral and professional standards of conduct and governing law.
- b) Any civil penalty not paid by Respondent by the prescribed date shall subject Respondent to all legal provisions pertaining to debt collection, including the imposition of interest, late payment charges and collection fees, referral of the debt to the New York State Department of Taxation and Finance for collection, and the non-renewal of permits or licenses. [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
- c) 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.
- d) Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to a review of office records, patient records, hospital charts, and/or electronic records, as well as interviews and/or periodic visits with Respondent and staff at practice locations or OPMC offices.
- e) 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.
- f) Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical

records shall contain all information required by state rules and regulations regarding controlled substances.

- g) Respondent shall enroll in and successfully complete continuing medical education (CME) as directed by the Office of Professional Medical Conduct, subject to the Director of OPMC's prior written approval.
- h) Respondent shall comply with this Consent Order and all its terms, conditions, restrictions, limitations and penalties and shall be responsible for all associated compliance costs. Upon receiving evidence of non-compliance with the Consent Order, or any violation of its terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against Respondent authorized by law.

EXHIBIT "C"

Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

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. 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.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation 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 45 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. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 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.

EXHIBIT "C"

5. 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.
6. 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.
7. Within 15 days of the Order's effective date, Licensee shall 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.
8. Licensee shall not 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, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, 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.
10. 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.

Exhibit "D"

CLINICAL COMPETENCY ASSESSMENT

- a. Prior to returning to the active practice of medicine under Respondent's New York license, Respondent shall obtain a clinical competency assessment (CCA) performed by a program for such assessment as directed by the Director of OPMC. Respondent shall complete the assessment to the satisfaction of the Director of OPMC and shall cause a written report of such assessment to be provided directly to the Director of OPMC.
 - i. Respondent shall be responsible for all expenses related to the clinical competency assessment and shall provide to the Director of OPMC proof of full payment of all costs that may be charged. This term of probation shall not be satisfied in the absence of actual receipt, by the Director, of such documentation, and any failure to satisfy shall provide a basis for a Violation of Probation proceeding.

- b. At the direction of the Director and no more than 60 days following receipt of the report of the clinical competency assessment, the Respondent shall identify a Preceptor, preferably a physician who is board certified in the same specialty, and subject to the Director of OPMC's written approval. No more than 30 days after learning that the approved Preceptor is no longer willing or able to serve or no more than 30 days after having been notified by the Director that the Preceptor has been discharged for cause, which shall include but not be limited to the inadequacy of the Preceptor's reports and/or performance, Respondent shall have an approved successor in place, subject to the Director's written approval. Upon approval, the new Preceptor shall perform the duties described in (i) through (iv) below. Regardless of the reason necessitating a replacement, if the Director does not approve Respondent's proposed new Preceptor, Respondent shall immediately cease the practice of medicine, unless notified by the Director, in writing, of an extension, which may be granted at the Director's discretion. In that event, Respondent shall propose another Preceptor, which the Director has 30 days to approve or disapprove until a Preceptor is accepted. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

The Respondent shall cause the Preceptor to:

- i. Develop and submit to the Director of OPMC for written approval a remediation plan, which addresses the deficiencies /retraining recommendations identified in the CCA. Additionally, this proposal shall establish a timeframe for completion of the remediation program.

- ii. Submit progress reports at periods identified by OPMC certifying whether the Respondent is fully participating in the personalized continuing medical

education program and is making satisfactory progress towards the completion of the approved remediation plan.

- iii. Report immediately to the Director of OPMC if the Respondent withdraws from the program and report promptly to OPMC any non-compliance by the Respondent.
 - iv. At the conclusion of the program, and at any time prior to the conclusion, as Preceptor deems appropriate, submit to the Director a detailed assessment of the progress made by the Respondent toward remediation of all identified deficiencies, a recommendation regarding the need for any further remediation or training, and any recommendation regarding advisable restrictions, if any, on Respondent's future medical practice.
- c. Respondent shall be subject to any further conditions and/ or terms of probation as may be imposed by Director, in the Director's sole reasonable discretion, as the Director deems necessary based upon all relevant facts and circumstances then known to OPMC, including, but not limited to, those related to the OPMC investigation of Respondent, the results and recommendations of the CCA, the Preceptor's reports, and Respondent's practice in the future, as deemed by the Director to be necessary to protect the public health. Respondent, by making this Application, stipulates that the Director shall be so authorized.
- d. Respondent shall be solely responsible for all expenses associated with these terms, including fees, if any, for the clinical competency assessment, the personalized continuing medical education program, or to the monitoring physician.