



**Department
of Health**

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

June 10, 2022

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Gerald J. Gracia, M.D.



Re: License No. 267318

Dear Dr. Gracia:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 22-141. This order and any penalty provided therein goes into effect June 17, 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: James C. Knox, Esq.
E. Stewart Jones, Hacker, Murphy, LLP.
28 Second Street
Troy, New York 12180

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

BPMC No. 22-141

IN THE MATTER
OF
GERALD J. GRACIA, M.D.

CONSENT
ORDER

Upon the application of (Respondent) GERALD J. GRACIA, 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: 6/09/2022


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
GERALD J. GRACIA, M.D.**

**CONSENT
AGREEMENT**

GERALD J. GRACIA, M.D., represents that all of the following statements are true:

That on or about October 26, 2012, I was licensed to practice as a physician in the State of New York and issued License No. 267318 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 Third Specification of Charges in the Statement of Charges, 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.

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 the Licensee's profile 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 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 the 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.

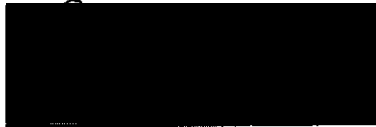
I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the 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 5/20/22

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GERALD J. GRACIA, M.D.
RESPONDENT

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

DATE: 5/25/22

[Redacted Signature]

JAMES C. KNOX, ESQ.
Attorney for Respondent

DATE: 6/2/2022

[Redacted Signature]

NATHANIAL WHITE
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 6-8-22

[Redacted Signature]

SHELLY WANG BANDAGO
Director
Office of Professional Medical Conduct

EXHIBIT A

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

IN THE MATTER

OF

GERALD J. GRACIA, M.D.

STATEMENT
OF
CHARGES

GERALD J. GRACIA, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 26, 2012, by the issuance of license number 267318 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 22, 2018, a misdemeanor complaint was filed in the Superior Court of California, County of San Bernardino, Rancho Cucamonga District, whereby the Respondent was charged with three misdemeanor charges including, Count One: Driving While Under the Influence of Alcohol (CA Vehicle Code section 23152[a]), Count Two: Driving With a .08% Blood Alcohol Content (CA Vehicle Code section 23152[b]), and Count Three: Unlicensed Driver (CA Vehicle Code section 12500[a]). On or about June 7, 2019, in the Superior Court of California, County of San Bernardino, Rancho Cucamonga District, the Respondent pled no contest and was convicted of violating California Vehicle Code section 23103(a) – reckless driving with an alcohol consumption advisement, a misdemeanor. The California Superior Court sentenced the Respondent to thirty-six months of probation with a requirement that he enroll and complete an alcohol education program, among other terms of probation, and fined him in the amount of \$1,888.00.

B. The conduct resulting in the California conviction against the Respondent would constitute a crime under the laws of New York State pursuant to the following section of New York law:

1. New York Vehicle and Traffic Law § 1212 (Reckless Driving).

C. On or about August 4, 2021, the Medical Board of California (California Board) issued a Decision and Order that became effective on or about September 3, 2021. The California Board found cause to discipline the Respondent in the form of a public reprimand pursuant to California Business and Professions Code sections 2236(a) and 490, and California Code of Regulations title 16 section 1360. The disciplinary action was based on the California Board's finding that the Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon - reckless driving with an alcohol consumption advisement (California Vehicle Code section 23103[a]) - among other provisions of California law.

D. The conduct resulting in the California disciplinary action against the Respondent would constitute misconduct under the laws of New York State pursuant to the following sections of New York law:

1. New York Education Law section 6530(9)(a)(i) and/or (iii).

E. On or about February 12, 2019, Respondent prepared and/or submitted a Registration Application document with the New York State Education Department and answered "No" to the question, "Since your last registration application, are criminal charges pending against you in any court?". At the time the Respondent prepared and/or submitted the Registration Application, a misdemeanor complaint had been filed against the Respondent in California Superior Court on May 22, 2018, charging the Respondent with three misdemeanor counts. The Respondent's failure to disclose his pending criminal charges was a false representation, Respondent knew the

representation was false, and Respondent intended to mislead through the false representation.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (Other Jurisdiction)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State law (namely N.Y. Vehicle and Traffic Law § 1212) as alleged in the facts of the following:

1. Paragraphs A, B and B.1.

SECOND SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State (namely N.Y. Educ. Law §§ 6530[9][a][i] and/or [iii]) as alleged in the facts of the following:

2. Paragraphs C, D and D.1.

THIRD SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having the Respondent's license to practice medicine revoked, suspended or having other disciplinary action taken, or having the Respondent's application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered the Respondent's license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York State (namely N.Y. Educ. Law §§ 6530[9][a][i] and/or [iii]) as alleged in the facts of the following:

3. Paragraphs C, D and D.1.

FOURTH SPECIFICATION

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:

4. Paragraph E.

DATE: March 24, 2022
Albany, New York


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