



**Department  
of Health**

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

March 10, 2023

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

John Constantine D'Emilia, M.D.  


Re: License No. 170251

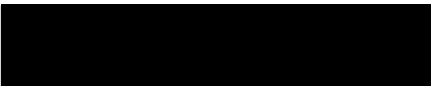
Dear Dr. D'Emilia:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 23-051. This order and any penalty provided therein goes into effect March 17, 2023.

The Board Order checklist requires your review and compliance as it relates to your Order.

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: Paul Cirel, Esq.  
Todd & Weld, LLP.  
One Federal Street  
Boston, Massachusetts 02110

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

BPMC No. 23-051

IN THE MATTER

CONSENT

OF

ORDER

JOHN CONSTANTINE D'EMILIA, M.D.

Upon the application of John Constantine D'Emilia, 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: 3/09/2023

  
THOMAS T. LEE, 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  
  
JOHN CONSTANTINE D'EMILIA, M.D.

CONSENT  
AGREEMENT

John Constantine D'Emilia, M.D., represents that all of the following statements are true:

That on or about May 29, 1987, I was licensed to practice as a physician in the State of New York, and issued License No. 170251 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 understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest 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(6), Respondent shall be subject to a limitation precluding registration or issuance of any further license.

I further agree that the Consent Order for which I apply 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 Respondent shall be precluded from practicing medicine in New York State, from practicing in any setting where her practice is based solely on her New York license, and from further reliance upon Respondent's New York license to practice medicine to exempt Respondent from the licensure, 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; and

That if Respondent is currently registered to practice medicine in New York State, Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," shall provide proof of such notification to the Director of OPMC immediately upon having done so, and shall not reactivate or reregister the license at any time; 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 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 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; and

That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined in 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 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 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 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 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 ask that the Board adopt this Consent Agreement.

I am aware and agree that, regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the Consent Agreement that I propose in this application, or to decline to do so.

DATE 03/07/2023

  
\_\_\_\_\_  
John Constantine D'Emilia, M.D.  
RESPONDENT

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

DATE: 3-8-23

[Redacted Signature]

PAUL CIREL, ESQ.  
Attorney for Respondent

DATE: 3/8/23

[Redacted Signature]

DEBORAH BETH MEDOWS  
Senior Attorney  
Bureau of Professional Medical Conduct

DATE: 3-9-2023

[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**  
**JOHN CONSTANTINE D'EMILIA, M.D.**

STATEMENT  
OF  
CHARGES

John Constantine D'Emilia, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 29, 1987, by the issuance of license number 170251 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about September 9, 2021, the Commonwealth of Massachusetts' Board of Registration in Medicine (hereinafter "the Massachusetts Board") issued a Final Decision and Order regarding Respondent. The matter came before the Massachusetts Board for disposition on the basis of an April 28, 2021 Recommended Decision incorporating the Parties' April 13, 2021 Stipulation, which was incorporated by reference.
- B. The April 28, 2021 Summary of Decision referenced the July 20, 2018 Statement of Allegations and stated that on May [sic April] 13, 2021, by mutual agreement among the parties, the Complaint Counsel filed a Joint Stipulation in which the Respondent conceded that he failed to meet the standard of care with regard to two patients and failed to properly document the treatment of two other patients, and noted that the parties recommended a reprimand as a sanction.

C. In the September 9, 2021, Final Decision and Order, the Board adopted the Recommended Decision contingent upon a modification to the sanction. The Massachusetts Board reprimanded Respondent's lapsed license. In addition, the Massachusetts Board determined that "should the Respondent apply for revival of his license to practice medicine, he will be required to: 1) complete a practice audit by a Board-approved entity prior to revival of his license; 2) at the Board's sole discretion, the Respondent may also be subject to a Probation Agreement; and 3) at the Board's sole discretion, the Respondent may also be subject to a practice restriction depending on the results of the practice audit."

1. The conduct resulting in the Massachusetts Board's Final Decision and Order would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

a. N.Y. Education Law § 6530 (3) (Practicing the profession with negligence on more than one occasion), as alleged in the facts of:

i. Paragraphs A-C.

b. N.Y. Education Law § 6530 (32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient), as alleged in the facts of:

i. Paragraphs A-C.

### **SPECIFICATION OF CHARGES**

#### **HAVING A DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her 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 (3) and (32), as alleged in the facts of the following:

1. The facts in Paragraph A-C.

DATE: February 9 , 2023  
New York, New York

  
Henry Weintraub  
Chief Counsel  
Bureau of Professional Medical Conduct

**EXHIBIT "B"**

**Requirements for Closing a Medical Practice  
(Following Agreement to Never Register/Never Practice)**

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 in New York or pursuant to a New York license.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's current biennial registration, if any, 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, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, notify all patients of the cessation 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, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, 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.

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 his/her 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, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, 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, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, 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 in New York, 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.