



***New York State Board for Professional Medical Conduct***

*433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863*

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NYS Department of Health*

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*Executive Deputy Commissioner  
NYS Department of Health*

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*Office of Professional Medical Conduct*

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*Vice Chair*

Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

*Public*

June 1, 2005

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

Neta Maccabee, M.D.  
213 Bennett, #2M  
New York, NY 10040

Re: License No. 228969

Dear Dr. Maccabee:

Enclosed is a copy of Order #BPMC 05-108 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect June 8, 2005.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.  
Executive Secretary

Board for Professional Medical Conduct

Enclosure

cc: Wilfred T. Friedman, Esq.  
Friedman and Mahdavian  
36 West 44th Street, Suite 816  
New York, NY 10036

**IN THE MATTER  
OF  
NETA MACCABEE, M.D.**

**CONSENT  
ORDER**

BPMC No. 05-108

Upon the application of (Respondent) NETA MACCABEE, 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 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.

DATED: 5-31-2005

  
KENDRICK A. SEARS, 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  
NETA MACCABEE, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

NETA MACCABEE, M.D., representing that all of the following statements are true, deposes and says:

That on or about June 26, 2003, I was licensed to practice as a physician in the State of New York, and issued License No. 228969 by the New York State Education Department.

My current address is 213 BENNETT # 2M, N.Y./N.Y. 10040, and I shall 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 has charged me with two 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 cannot successfully defend against at least one of the acts of misconduct alleged in the Statement of Charges, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to §230-a(2) of the Public Health law, my license to practice medicine in the State of New York shall be suspended for a period of 24 months, with the first 12 months to be served as a period of actual suspension and with the last 12 months of

the suspension to be stayed. Pursuant to §230-a(9) of the Public Health Law, upon the completion of the 12 month period of actual suspension, I shall be placed on probation for an indefinite period of not less than five years, subject to the terms set forth in attached Exhibit "B." I shall also be subject to a condition that I comply with attached Exhibit "C," "Guidelines For Closing a Medical Practice Following a Revocation, Surrender or Suspension (Of 6 Months or More) of a Medical License."

I further agree that the Consent Order shall impose the following conditions:

That within 30 days of the issuance of the Consent Order, Respondent shall notify the New York State Education Department, Division of Professional Licensing Services, (DPLS) that Respondent's license status is "inactive", and shall provide proof of such notification to the Director of OPMC within 30 days thereafter. Should the Board subsequently issue a Modification Order restoring Respondent to active medical practice, Respondent shall, within 30 days thereafter, notify the New York State Education Department, Division of Professional Licensing Services (DPLS), that Respondent's license status is "active", provide proof of such notification to the Director of OPMC within 30 days, and thereafter maintain active registration of her license with the New York State Education Department Division of Professional Licensing

Services (except during periods of actual suspension), and pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and shall continue so long as Respondent remains licensed in New York State; 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 shall continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

If I am charged with professional misconduct in future, I hereby stipulate and agree that this Application and Order, and/or related Modification Orders shall be admitted into evidence at such 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 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.

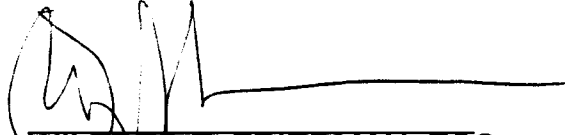
I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 230 and 230-a and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent 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.

DATED 4/4/05

*Neta Maccabee*  
NETA MACCABEE, M.D.  
RESPONDENT

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

DATE: 4/5/05

  
WILFRED T. FRIEDMAN, ESQ.  
Attorney for Respondent

DATE: May 9, 2005

  
MARCIA E. KAPLAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: May 25, 2005

  
DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct



**EXHIBIT "A"**

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

IN THE MATTER  
OF  
NETA MACCABEE, M.D.

STATEMENT  
OF  
CHARGES

NETA MACCABEE, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 26, 2003, by the issuance of license number 228969 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. From in or about 2004 to date, Respondent has had a psychiatric condition that impairs her ability to practice medicine and/or has been a habitual user of controlled substances.
- B. On repeated occasions in or about 2004, Respondent, a psychiatrist, failed to provide appropriate care and treatment to Patient A in that she committed boundary violations with respect to this patient.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**BEING AN HABITUAL USER OR HAVING A PSYCHIATRIC  
CONDITION WHICH IMPAIRS THE ABILITY TO PRACTICE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8) by being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice as alleged in the facts of the following:

- 1. Paragraph A.


**SECOND SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of:

2. Paragraph B.

DATED: <sup>May 9</sup>  
March, 2005  
New York, New York

  
\_\_\_\_\_  
Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

## **EXHIBIT "B"**

### **TERMS OF PROBATION**

1. During the period of probation, Respondent shall be precluded from any practice of medicine until the State Board for Professional Medical Conduct (Board) issues an order permitting such practice ("Modification Order") upon its determination, after a showing by Respondent to the satisfaction of a Committee on Professional Conduct (Committee) of the Board, as further set forth below, that she has successfully complied with or completed a course of therapy and ongoing evaluation, is no longer incapacitated for practice as a physician, and is both fit and clinically competent to practice as a physician.
2. Upon Respondent's request, the Board shall convene a Committee to hear and evaluate Respondent's showing, as set forth in paragraph 1 above. The Board shall make reasonable attempts to convene a Committee within 90 days of Respondent's request; however, Respondent's request shall not be perfected until the Director of the Office of Professional Medical Conduct (Director) receives all the materials that the Respondent is required to provide under the terms of this Order, including those in Paragraph 3 below. The procedure to be followed by the Committee shall be determined by the Board through the exercise of reasonable discretion by the Director upon consultation with Counsel, Bureau of Professional Medical Conduct (Counsel). Proceedings before the Committee are ***not*** hearings under New York Public Health Law §230, and shall not follow the procedures of those hearings; rather they are informal meetings intended solely to address all facts, evidence, information, circumstances, or issues concerning the advisability of modifying the term of probation in paragraph 1 above precluding Respondent from the practice of medicine. Respondent shall have the burden of proof and persuasion at the proceeding. The determination of whether Respondent has successfully complied with or completed a course of therapy and ongoing evaluation, is no longer incapacitated for practice as a physician, and is both fit and clinically competent to practice as a physician, shall be made solely by the Committee. The Committee of the Board shall exercise its reasonable discretion upon its review of all the evidence before it, and its exercise of discretion shall not be reviewable by the Administrative Review Board. The Committee shall be given access to evidence including, but not limited to:

- a. Any and all evidence pertaining to Respondent's compliance with the conditions imposed.
- b. Any evidence that the Director or Counsel deems appropriate.

3. When Respondent requests that a Committee be convened pursuant to paragraph 2, she shall provide the Director of OPMC with the following materials:

- a. The signed acknowledgment and curriculum vitae from the proposed sobriety monitor referred to in paragraph 5c.
- b. The signed acknowledgment and curriculum vitae from the proposed supervising physician referred to in paragraph 5d.
- c. The signed acknowledgment and curriculum vitae from the proposed health care professional referred to in paragraph 5e.
- 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, and whether evaluation or treatment occurred before or during the probation period. These certified records shall be forwarded directly to OPMC from all treatment providers, facilities and evaluators, unless otherwise directed by the Director. The records shall include the results of all tests conducted to evaluate Respondent's fitness and clinical competence to practice medicine.
- 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 with the Program(s) and the results of all forensically valid alcohol/drug screening.
- f. Fully executed waivers of patient confidentiality for all past and prospective treatment records.

- g. A current, independent, in-depth chemical dependency and psychiatric evaluation by a board-certified psychiatrist specializing in addiction medicine and boundary issues.
- h. A proposed treatment plan for the Committee's consideration.
- i. Evidence that Respondent has maintained adequate knowledge and competence to practice as a physician. This evidence shall include documentation of successful completion of continuing medical education ("CME"), including but not limited to CME in physician -patient boundary issues. At the Director's request, this evidence shall also include a report of an independent evaluation of Respondent's medical knowledge and competence.
- j. At the Director's request, Respondent shall attend, participate in and cooperate with an interview with designated OPMC personnel.

4. At least fourteen (14) days before the scheduled date of the proceeding referred to in paragraph 2, Respondent shall provide OPMC with certified true and complete legible copies of updated treatment records and alcohol/drug screening results since the date of the original submissions referred to in paragraph 3d.

**Submission of the documentation set forth in paragraphs 3 and 4 above, shall not, by itself, constitute a showing that Respondent is no longer incapacitated for practice as a physician.**

5. If the Board issues a Modification Order modifying the preclusion of Respondent from the practice of medicine, upon the Respondent's showing and the Committee's determination that Respondent is no longer incapacitated for practice as a physician, and that Respondent is both fit and clinically competent to practice as a physician, as set forth above, **the Modification Order shall impose terms of probation for a period of no less than five years.** The minimum terms of probation shall include the following:

- a. Respondent shall be required to comply with the terms of a continuing after-care treatment plan that addresses the major problems associated with Respondent's illness.

- b. At the Director's direction, 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.
- c. Respondent's sobriety shall be monitored by a health care professional ("sobriety monitor), who shall be proposed by Respondent and approved in writing by the Director. The sobriety monitor shall not be a personal friend of Respondent's, and shall be familiar with Respondent's history of chemical dependence, with this Order, and with the terms of probation imposed. The sobriety monitor shall acknowledge his/her willingness to comply with the monitoring terms by executing the acknowledgment provided by OPMC.
  - i. Respondent shall remain drug and alcohol free.
  - ii. The sobriety monitor shall see Respondent at least twice a month.
  - iii. The sobriety monitor shall direct Respondent to submit to unannounced tests of her blood, breath and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if a test is positive or is refused by Respondent. Respondent shall avoid all substances that may cause positive urine drug screens, including but not limited to poppy seeds, mouthwash, and cough medicine. Any positive test result shall be considered a violation of probation.
  - iv. The sobriety monitor shall report to OPMC any non-compliance with the imposed conditions.
  - v. Respondent shall ensure that the sobriety monitor submits quarterly reports to OPMC certifying Respondent's compliance with, or detailing Respondent's failure to comply with, each of the conditions imposed. These reports shall include the results of all body fluid and/or

breath tests for drugs and/or alcohol performed during that quarter.

- d. Respondent shall be supervised in Respondent's medical practice by a licensed physician ("practice supervisor"), who shall be proposed by Respondent and approved in writing by the Director of OPMC. The supervising physician shall be familiar with Respondent's impairment history and with the Order and its conditions. The supervising physician shall be in a position to regularly observe and assess Respondent's medical practice. The supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order, and shall oversee Respondent's prescribing, administering, dispensing, inventorying and wasting of controlled substances. The supervising physician shall acknowledge his/her willingness to comply with the supervision by executing the acknowledgment provided by OPMC.
  - i. Respondent shall ensure that the supervising physician submits quarterly reports to OPMC regarding the quality of Respondent's medical practice, any unexplained absences from work and certifying her compliance or detailing her failure to comply with each condition imposed.
  - ii. The supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.
- e. Respondent shall continue in treatment with a health care professional ("treating health care professional") for as long as the health care professional determines it is necessary, or for the period of time directed in the Modification Order. The treating health care professional shall be a Board-certified psychiatrist, proposed by Respondent and approved, in writing, by the Director of OPMC.
  - i. Respondent shall cause the treating health care professional to submit a proposed treatment plan and quarterly reports to OPMC certifying that Respondent is in

compliance with the treatment plan. The treating health care professional shall report to OPMC immediately if Respondent is non-compliant with the treatment plan, leaves treatment against medical advice, demonstrates any significant pattern of absences, and/or displays any symptoms of a suspected or actual relapse.

- ii. The treating health care professional shall acknowledge his/her willingness to comply with the required reporting by executing the acknowledgment provided by OPMC.

6. Should the Board issue a Modification Order, the terms of probation set out in paragraph 5 shall be the minimum probation terms related to Respondent's fitness to practice to be imposed on her practice upon modification of the term of probation precluding Respondent from the active practice of medicine; the Committee may add other terms, as it deems necessary. All costs of compliance with the terms of this Order shall be Respondent's responsibility. Respondent's failure to comply with any of the terms of a Modification Order restoring her to practice may result in a violation of probation proceeding or other disciplinary action being brought against her charging professional misconduct as defined by the New York State Education Law, including but not limited to NY Education Law §6530(29).

7. Should a Committee deny a petition by Respondent for a Modification Order modifying the probation term in paragraph 1 above precluding her from medical practice, Respondent shall not again request that a Committee be convened for at least nine (9) months after the denial.

8. Upon the Committee's modification of the term of probation set forth in paragraph 1 precluding Respondent from the active practice of medicine, in addition to the terms set out in paragraph 5, and any other terms added by the Committee, Respondent shall 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. Respondent shall maintain active registration of her license



(except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.

- c. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such 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, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
- d. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Order. Upon the Director's request, Respondent shall meet in person with the Director's designee.
- e. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
- f. The period of probation, and the terms set forth in a Modification Order, as set forth above, shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (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 thirty (30) day period. Respondent shall then notify the Director again at least fourteen (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 are necessary to protect the public health.

- g. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts, and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- h. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
- i. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of non-compliance with, or violation of, these terms, the Director and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

**EXHIBIT "C"**

**GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A  
REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more)  
OF A MEDICAL LICENSE**

1. Respondent shall immediately cease the practice of medicine in compliance with the terms of the Consent Order. Respondent shall not represent herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within fifteen (15) days of the Consent Order's effective date, Respondent shall notify all patients that she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty (30) days of the Consent Order's effective date, Respondent shall have her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty (30) days of the Consent Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (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 ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized 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 sent at reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.

5. Within fifteen (15) days of the Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within fifteen (15) days of the Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.
7. Within fifteen (15) days of the Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.
8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by herself or others) while barred from practicing medicine. Respondent may receive compensation 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 Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the Order's effective date.

10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four (4) years, under Section 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under Section 230-a of the Public Health Law.