

**NEW YORK**  
state department of  
**HEALTH**

Public

Howard A. Zucker, M.D., J.D.  
Acting Commissioner of Health

Sue Kelly  
Executive Deputy Commissioner

July 8, 2014

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

Thomas A. Cross, R.P.A.  
REDACTED

Re: License No. 006053

Dear Mr. Cross:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 14-170. This order and any penalty provided therein goes into effect July 15, 2014.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Karen Butler, Esq.  
Thuillez, Ford, Gold, Butler & Monroe, LLP  
20 Corporate Woods Boulevard  
Albany, NY 12211

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

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BPMC No 14-170

IN THE MATTER  
OF  
THOMAS A. CROSS, R.P.A.

MODIFICATION  
OF  
CONSENT ORDER

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This matter was brought to the New York State Board for Professional Medical Conduct (BPMC) for decision at the request of Thomas A. Cross, R.P.A., (Licensee), License No. 006053. Licensee was subject to BPMC Order No. 07-57 (Order), effective March 20, 2007. The Order suspended Licensee's license to practice as a physician assistant for an indefinite period of no less than twenty (24) months. The purpose of this proceeding was to determine whether the suspension was to be stayed upon the satisfaction of a Committee on Professional Conduct of the State Board for Professional Medical Conduct that Licensee, among other things, has successfully complied with or completed a course of therapy and ongoing evaluation, which includes a determination that Licensee is no longer incapacitated for the active practice of medicine and that he is both fit and competent to practice as a physician assistant.

A meeting of the Committee was held in the above-entitled proceeding on November 19, 2013. Licensee appeared with his attorneys, Karen A. Butler, Esquire, and Andrew McNamara, Esquire, before a Committee of the State Board for Professional Medical Conduct consisting of Dennis P. Zimmerman, MS. CRC, Chair, Eleanor C. Kane, M.D., and William A. Tedesco, M.D. The Committee determined, by unanimous decision, after review of the documents submitted for the petition and careful consideration of all evidence and testimony provided that the suspension of Licensee's license shall be stayed and he shall be allowed to practice as a physician assistant subject

to the following conditions.

THEREFORE, IT IS HEREBY ORDERED THAT:

The suspension on the Licensee's license to practice as a physician assistant in the State of New York is stayed and that he shall be subject to the following conditions. Licensee shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters concerning Licensee. Licensee shall respond in a timely manner to all OPMC requests for written periodic verification of Licensee's compliance with this Order. Licensee shall meet with a person designated by the Director of OPMC, as directed. Licensee shall respond promptly and provide all documents and information within Licensee's control, as directed. These conditions shall take effect upon the Board's issuance of this Order and will continue so long as Licensee remains licensed in New York State.

Licensee shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect 120 days after the effective date of the Order and will continue for as long as Licensee remains licensed in New York State.

Licensee shall provide the Director of OPMC with the following information and shall ensure that such information is kept current: a full description of Licensee's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; all current and past hospital, facility, medical practice affiliations and/or applications for such affiliations; all professional licenses held and applied for; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility.

Licensee shall notify OPMC, in writing, within thirty (30) days of any additions to or changes in the required information. This requirement will continue until Licensee completes the probation imposed by this Order.

Licensee's return to practice is subject to the following terms of probation. Unless otherwise indicated, these terms shall remain in effect for a period lasting **seven (7) years** from the effective date of this Order.

**Licensee may not commence practice as a physician assistant in New York State until all proposed monitors have been approved in writing by the Director of OPMC.**

1. The period of probation, including some or all of the terms and conditions described herein, may be tolled, at the discretion of the Director of OPMC, during periods in which the Licensee is not engaged in the active practice as a physician assistant in New York State. Licensee shall notify the Director, in writing, if he is not currently engaged in or intends to leave the active practice as a physician assistant in New York State for a period of thirty (30) consecutive days or more. Licensee shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon the Licensee's return to active practice in New York State, the period of probation shall resume and the Licensee shall fulfill any unfulfilled probation terms and such additional requirements as the Director may reasonably impose or as are necessary to protect the public health.

2. Licensee shall remain free from alcohol and all other mood altering substances other than those prescribed for Licensee's treatment by a physician or other licensed health care practitioner aware of Licensee's history of chemical dependency. Licensee shall not self-prescribe any medications.

3. Licensee shall be monitored by a qualified health care professional (Sobriety Monitor) proposed by Licensee and approved in writing by the Director of the OPMC. The Sobriety Monitor is to be familiar with Licensee's history of chemical dependency and with the terms of this Order. Licensee shall submit the name of a proposed successor within seven (7) days of learning that the approved Sobriety Monitor is no longer willing or able to serve.

a. The Sobriety Monitor shall oversee Licensee's compliance with the terms and conditions imposed herein and shall cause to be performed forensically valid, random, directly observed, unannounced hair, blood, breath, oral fluid and/or urine tests for the presence of alcohol and other drugs in Licensee. **Licensee shall provide drug screens at a frequency of no less than six (6) times per month for the first twelve (12) months.** The Licensee shall be called on a seven day a week basis and drug screens must include weekend and evening collections. After twelve (12) months, if Licensee has been fully compliant with this Order, a request for a reduction in the number of drug screens may be submitted for approval in writing by the Director of OPMC.

b. The Sobriety Monitor shall notify OPMC immediately if Licensee refuses such a test.

c. The Sobriety Monitor shall notify OPMC immediately if any drug screen reveals, or if the monitor otherwise learns, the Licensee is not alcohol/drug free.

d. Every three (3) months, the Sobriety Monitor shall submit to OPMC a report certifying compliance with each of the terms of this Order or describing in detail any failure to comply. The quarterly reports shall include forensically valid results of all tests for the

presence of alcohol and other drugs performed during that quarter.

- e. Licensee shall report to the Sobriety Monitor **within four (4) hours** of being contacted by the Sobriety Monitor to submit a hair, blood, breath oral fluid and/or urine specimen.
  - f. Licensee shall avoid all substances that may cause positive results such as poppy seeds/mouthwash/cough medication/hand sanitizer/herbal teas. **Any positive result will be considered a violation of this Order.**
  - g. If Licensee is to be unavailable for sobriety monitoring for a period of 15 days or more, Licensee shall notify his Sobriety Monitor and seek and receive prior written permission from the Director of OPMC subject to any additional terms and conditions required by the OPMC.
4. For the duration of the Order, Licensee shall practice only in a group setting that has been proposed by Licensee and approved in writing by the Director of OPMC.
  5. Licensee's practice as a physician assistant shall be limited to no more than three (3) days per week for a total of thirty (30) hours per week with no call for one (1) year. After this period, Licensee may submit a written request for review and written approval by the Director of OPMC, seeking an increase in his practice hours and to take call. However, Licensee will be limited to practicing no more than 40 hours per week for the remainder of the Order.
  6. Within the first year of probation, Licensee shall take the recertification exam given

by the National Commission on Certification of Physician Assistants (NCCPA). If Licensee does not pass the NCCPA recertification exam or is unable to sit for the NCCPA recertification exam during the first year of probation, he must submit a written request to the Director of OPMC for an extension of the deadline by which he must take the NCCPA recertification exam.

7. Licensee shall be supervised in his practice by a licensed physician (Practice Supervisor) proposed by Licensee and approved in writing by the Director of OPMC. 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 Licensee's medical practice. The Licensee shall make available to the Practice Supervisor any and all records or access to the practice requested by the Practice Supervisor. The Practice Supervisor is to be familiar with Licensee's history of chemical dependency and with the terms of this Order. Licensee shall submit the name of a proposed successor within seven (7) days of becoming aware that Licensee's approved Practice Supervisor is no longer willing or able to serve in that capacity.

- a. The Practice Supervisor shall provide direct, concurrent supervision of Licensee for the first six (6) months of probation.
- b. The Practice Supervisor shall submit a report to OPMC every three (3) months regarding the quality of Licensee's practice, any unexplained absences from work, and Licensee's compliance or failure to comply with each condition described within this Order.
- c. The Practice Supervisor shall establish the capability of immediately obtaining a drug screen on Licensee in response to any complaint or observation that indicates Licensee may not be drug or alcohol free

- d. The Practice Supervisor shall oversee the Licensee's prescribing, administering, dispensing, ordering, inventory and wasting of controlled substances.
  - e. The Practice Supervisor shall immediately report any suspected or actual impairment, inappropriate behavior, perceived deviation from accepted standards of medical care or possible misconduct to OPMC.
  - f. The Practice Supervisor shall notify OPMC immediately if Licensee violates any term(s) of this Order
8. Licensee shall not treat nor prescribe medications for any friends or family members.
  9. Licensee shall not apply for a Drug Enforcement Administration (DEA) Controlled Substance Registration Certificate until he has successfully completed four (4) years of probation.
  10. Licensee shall enroll in and successfully complete a minimum of 50 hours of Category 1 and 2 continuing medical education (CME) in his practice specialty each year. Licensee shall provide written confirmation to OPMC of his completion of the CME courses.
  11. Licensee shall continue in treatment with a qualified health care professional (Therapist), proposed by Licensee and approved, in writing, by the Director of OPMC. The Therapist is to be familiar with the Licensee's history of chemical dependency and with the terms of this Order. Licensee will continue in treatment at a frequency determined by the Therapist, under a treatment plan approved by the Director of OPMC, for the duration of the Order. OPMC, at its discretion, may



provide information or documentation from its investigative files concerning Licensee to Licensee's Therapist. Licensee shall submit the name of a proposed successor within seven (7) days of becoming aware that the Licensee's approved Therapist is no longer willing or able to serve in their capacity.

- a. The Therapist shall submit reports to OPMC every three (3) months certifying compliance with treatment by Licensee and describing in detail any failure to comply.
- b. The Therapist shall report immediately to OPMC any significant pattern of absences, suspected or actual impairment, failure to comply or discontinuation of recommended treatment, including any prescribed medications, by Licensee.

12. Licensee shall provide the Director of OPMC with, and ensure to keep current and effective, fully executed waivers of patient confidentiality for 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: HIPPA, 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.

13. The Director of OPMC shall reserve the authority to direct the Licensee to undergo an independent evaluation by a practitioner or facility (Evaluator) approved by the Director of OPMC that specializes in alcohol/chemical dependency issues and/or mental illness. The Licensee shall execute authorizations to provide the Evaluator with copies of all previous treatment records and provide the Evaluator with a copy of this Order. The Licensee shall execute authorizations, and keep said authorizations active, allowing the Evaluator to obtain collateral information and communicate with the Director of OPMC or his designee. OPMC, at its discretion, may provide information or

documentation from its investigation files concerning the Licensee to the Evaluator. Reports of such evaluations shall be submitted directly to the Director of OPMC. Licensee shall follow treatment recommendations made by the Evaluator. If the Evaluator determines that the Licensee is not fit to practice, the Licensee shall immediately cease practice until it is determined he is fit to resume practice. Failure to comply with the treatment recommendations will be considered a violation of this Order.

14. Licensee shall continue participation in self-help fellowship (e.g., AA, NA, Caduceus, other). Licensee shall maintain an ongoing relationship with a sponsor.

15. Licensee shall continue enrollment in the Committee for Physicians Health (CPH) and shall engage in a contract with CPH that fully describes the terms, conditions and duration of a recovery program. Respondent shall fully comply with the contract.

a. Licensee shall provide a written authorization for CPH to provide to the Director of OPMC with any/all information or documentation requested by OPMC to determine whether Licensee is in compliance with the CPH contract and with this Order, including full access to all records maintained by CPH with respect to Licensee.

b. Licensee shall cause CPH to report to OPMC if Licensee refuses to comply with the contract, refuses to submit to treatment or if his impairment is not substantially alleviated by treatment. CPH shall report immediately to OPMC if Licensee is regarded at any time to be an imminent danger to the public.

16. Licensee shall inform all treating physicians or other health care practitioners of

Licensee's history of chemical dependency. Licensee shall advise OPMC, within seven (7) days, of any controlled or mood-altering substances dispensed, administered or prescribed to him by any treating physician or other health care practitioner.

17. The Director of OPMC shall reserve the right to review Licensee's professional performance. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts (inclusive of electronic records), and interviews with or periodic visits with Licensee and staff at his practice locations or OPMC offices.

18. Licensee shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of all patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

19. Licensee shall adhere to Federal and State guidelines and professional standards of care with respect to infection control practices. Licensee shall ensure education, training, and oversight of all office personnel involved in medical care, with respect to those practices.

20. Licensee shall conduct himself in all ways in a manner befitting his professional status and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

21. Licensee shall personally meet with a person designated by the Director of OPMC as requested by the Director, at a time and location determined by OPMC.

22. Should Licensee practice as a physician assistant in another state, he shall provide

