

July 16, 2012

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

Chad Malone, M.D.

REDACTED

Re: License No. Unlicensed

Dear Dr. Malone:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-142. This order and any penalty provided therein goes into effect July 23, 2012.

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: Wilfred T. Friedman, Esq.  
60 East 42nd Street, 40th Floor  
New York, NY 10165

IN THE MATTER  
OF  
CHAD MALONE, M.D.

CONSENT  
ORDER

Upon the application of (Respondent) CHAD MALONE, 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: 7/15/2012

REDACTED

ARTHUR S. HENGERER, M.D.  
Chair  
State Board for Professional Medical Conduct

IN THE MATTER  
OF  
CHAD MALONE, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

CHAD MALONE, M.D., represents that all of the following statements are true:

That I am currently an unlicensed physician in the State of New York, and hereafter I will be referred to as "licensee" although I do not hold and have not held a license to practice medicine in New York State issued by the New York State Education Department. I am currently not licensed as a physician in any jurisdiction outside of New York State, with the exception of: (list the jurisdictions and license numbers or write "NONE")

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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 specification of professional misconduct.

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

I assert that I cannot successfully defend against at least one of the acts of misconduct alleged, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a (6), a limitation

shall be placed on the issuance to me of any further license to practice medicine. I shall be precluded from applying for licensure in New York for an indefinite period of time from this Consent Order's effective date, which shall be retroactive to June 28, 2010, and until, as further set forth in Exhibit "B", a Restoration Committee finds me fit and clinically competent to practice as a physician and issues a Modification Order, modifying this Consent Order. This Modification Order, pursuant to N.Y. Pub. Health Law § 230-a(9), shall place me on probation for a period of no less than five years, and shall include those probation terms set forth in attached Exhibit "B", and such other terms and additional requirements as the Restoration Committee or the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

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.

I further agree that the Consent Order shall impose the

following conditions:

That, after the Consent Order's effective date, Respondent shall not practice medicine as an exempt person within the meaning of N.Y. Educ. Law § 6526, until a Restoration Committee finds me fit and clinically competent to practice as a physician, as further set forth in Exhibit "B", and issues a Modification Order, modifying this Consent Order and specifically authorizing such practice.

That Respondent shall return all official New York State prescriptions in Respondent's possession to the Bureau of Narcotic Enforcement, and shall surrender Respondent's Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within 30 days of the Consent Order's effective date. Further, within 30 days of returning these prescriptions and surrendering this Registration, Respondent shall provide the Director of OPMC ("Director") with written evidence, satisfactory to the Director, that Respondent has complied with this condition.

That, should the New York State Education Department, in future, issue to Respondent a license to practice medicine, Respondent, thereafter, 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 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 future, I hereby stipulate and agree that this Consent Agreement and 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 N.Y. 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 5/10/12

REDACTED

~~CHAD MALONE, M.D.~~  
RESPONDENT



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

DATE: 5/14/11

REDACTED

~~WILFRED FRIEDMAN, ESQ.~~  
Attorney for Respondent

DATE: 5/21/12

REDACTED

~~JOEL E. ABELOVE~~  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: July 13, 2012

REDACTED

~~KEITH W. SERVIS~~  
Director  
Office of Professional Medical Conduct

**EXHIBIT "A"**

Scope of Investigation

Possible misconduct related to allegations of:

PHL Section 6530(7) - Practicing the profession while impaired by alcohol, drugs, physical or mental disability.

PHL Section 6530(8) - 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.

## EXHIBIT "B"

1. The preclusion of Respondent's licensure 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 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. No sooner than 12 months from the Consent Order's effective date, 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; 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 licensure preclusion. 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 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; 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 licensure preclusion 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), whether within or outside New York State. 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.
  - b. Evidence that Respondent has maintained adequate knowledge and competence to practice as a physician; this evidence shall include documentation of continuing medical education and, at the Director of OPMC's request, a report of an independent evaluation of Respondent's medical knowledge and competence.

**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.**

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 preclusion of Respondent's licensure, the Order shall further impose a period of probation, pursuant to N.Y. Pub. Health Law § 230-a, during which any authorized **practice by Respondent 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. 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.

- c. Respondent's sobriety will be monitored by a health care professional proposed by Respondent and approved, in writing, by the Director of OPMC ("sobriety monitor"). The sobriety monitor shall not be a personal friend. The sobriety monitor shall be familiar with Respondent's history of chemical dependence, with this Order, and with the terms of probation to be set forth. The sobriety monitor shall acknowledge 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 during each month.
  - iii. The sobriety monitor shall direct Respondent to submit to unannounced tests of Respondent's blood, breath and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time a test is positive or is refused by Respondent. Respondent shall avoid all substances that may cause positive urine drug screens such as poppy seeds, mouthwash, cough medicine, etc. **Any positive 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, or detailing Respondent's failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
- d. Respondent's medical practice shall be supervised by a licensed physician ("practice supervisor") proposed by Respondent and approved, in writing, by the Director of OPMC. The supervising physician shall be familiar with Respondent's history of impairment and with the Order and its conditions. The supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. The supervising physician shall be in a position to regularly observe and assess Respondent's medical practice. The supervising physician shall oversee Respondent's

prescribing, administering, dispensing, inventorying and wasting of controlled substances. The supervising physician shall acknowledge willingness to comply with the supervision terms 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 Respondent's compliance with each condition imposed, or detailing Respondent's failure to comply.
  - 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 or program ("health care professional") proposed by Respondent and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
- i. Respondent shall ensure that the health care professional submits quarterly reports to OPMC certifying that Respondent is in compliance with treatment, or detailing Respondent's failure to comply.
  - ii. The health care professional shall report to OPMC immediately if Respondent is non-compliant with the treatment plan or demonstrates any significant pattern of absences.
  - iii. The health care professional shall acknowledge willingness to comply with the reporting requirements with respect to treatment by executing the acknowledgment provided by OPMC.
- f. 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. The terms set forth in paragraph 5 are the minimum probation terms related to fitness to practice to be imposed on Respondent upon the termination of the licensure preclusion, 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 the termination of licensure preclusion 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).
7. If a Committee denies a petition by Respondent for termination of licensure preclusion, Respondent shall be barred from requesting that a Committee be convened to hear a petition for licensure preclusion termination for 9 months from the date of the denial.
8. In addition to the terms set out in paragraph 5, and any other terms added by the Committee, upon the termination of Respondent's licensure preclusion, 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. 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 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; all current and past affiliations and/or privileges, with hospitals, institutions, facilities, medical practices, managed care organizations, and/or applications for such affiliations and/or privileges; 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.



- c. 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].
- d. The probation period shall toll until the New York State Education Department issues a license to practice medicine to Respondent, or until a Restoration Committee issues a Modification Order modifying this Consent Order and authorizing Respondent to practice medicine as an exempt person. Thereafter, the probation period shall also 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.
- e. 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.
- f. 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.
- g. 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.

- 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.