

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

December 20, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Michael F. Wisiorek, R.P.A., D.O.

REDACTED ADDRESS

Re: License No. 009377 (physician assistant)
261764 (physician)

Dear Dr. Wisiorek:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 11-301. This order and any penalty provided therein goes into effect December 27, 2011.

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

Enclosure

cc: Edward C. Cosgrove, Esq.
565 Abbott Road
Buffalo, NY 14202-1303

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

IN THE MATTER

CONSENT

OF

ORDER

MICHAEL WISIOREK, R.P.A., D.O.

BPMC No. 11-301

Upon the application of MICHAEL WISIOREK, R.P.A., D.O. (Respondent), in the attached Consent Agreement, that 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 or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 12/19/2011

REDACTED SIGNATURE

KENDRICK A. SEARS, M.D.

Chair

State Board for Professional
Medical Conduct

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

IN THE MATTER

CONSENT

OF

AGREEMENT

MICHAEL WISIOREK, R.P.A., D.O.
BU-10-05-2775-A

MICHAEL WISIOREK, R.P.A., D.O., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about June 13, 2011, I was licensed to practice medicine in the State of New York and issued license number 261764 by the New York State Education Department. I am currently registered with the New York State Education Department to practice medicine through May 31, 2013. I was authorized to practice as a physician's assistant in New York State on or about July 3, 2003 by the issuance of registration number 009377 by the New York State Education Department. I am registered with the New York State Education Department to practice as a physician's assistant through October 31, 2011. I understand this Consent Order and its discipline, along with the attached terms and conditions of probation, apply to my licenses to practice medicine as a physician and as a physician assistant.

My current address is REDACTED ADDRESS, and I will advise the Director (Director) of the Office of Professional Medical Conduct (OPMC) of any change of my address within thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with three (3) 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 three (3) Specifications, and agree to the following sanction:

Censure and Reprimand;

Respondent shall be subject to five (5) years probation, with terms and conditions, in accordance with Exhibit B attached, and any extension and/or modifications, thereto;

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

That Respondent shall remain in continuous compliance with all requirements of New York Education Law § 6502 including, but not limited to, the requirements that a licensee shall register and continue to be registered as a physician 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 New York Education Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the effective date of the Consent Order and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall cooperate fully with the OPMC in its administration and enforcement of the Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Agreement. Respondent shall meet with a person designated by the Director, OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

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

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and the Consent 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 New York 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 the Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, or upon facsimile or email transmission to me or my attorney, whichever is first. The 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 of Health website.

I stipulate that the proposed sanction and Consent Order are authorized by New York Public Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, administratively and/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, OPMC, and the Chair of the Board each retain complete discretion either to enter into the proposed Consent 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.

AFFIRMED:

DATED: 12/13/11

REDACTED SIGNATURE

MICHAEL WISIOREK, R.P.A., D.O.
Respondent

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

DATE: ember 13, 2011

REDACTED SIGNATURE

EDWARD C. COSGROVE, Esq.
Attorney for Respondent

DATE: December 15, 2011

REDACTED SIGNATURE

MICHAEL G. BASS
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: 12/16/11

REDACTED SIGNATURE

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

IN THE MATTER
OF
MICHAEL WISIOREK, R.P.A., D.O.

STATEMENT
OF
CHARGES

MICHAEL WISIOREK, R.P.A., D.O., the Respondent, was authorized to practice medicine in New York State on or about June 13, 2011 by the issuance of license number 261764 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine through May 31, 2013. Respondent was authorized to practice as a physician assistant in New York State on July 3, 2003 by the issuance of registration number 009377 by the New York State Education Department. Respondent is registered with the New York State Education Department to practice as a physician assistant in New York State through October 31, 2011.

FACTUAL ALLEGATIONS

- A. Respondent, as a physician assistant, provided medical care to Patient A (patients are identified in the attached appendix), a 19 year old female, in Cheektowaga, New York on or about the summer of 2009. Patient A complained of low back pain, and Respondent prescribed her a narcotic based analgesic. Respondent's care and treatment of Patient A failed to meet accepted standards of medical practice in that:
1. Respondent, as a physician assistant, made no attempt at the utilization of non-controlled pain management analgesics and adjuvant physical modalities in therapeutics prior to prescribing Patient A a narcotic based analgesic.

2. Respondent, as a physician assistant, failed to adequately document his treatment of Patient A.
- B. Respondent, as a physician assistant, provided medical care for Patient B, a 22 year old female, in Cheektowaga, New York on or about the summer of 2009. Patient B complained of back and knee pain, and Respondent prescribed her a narcotic based analgesic. Respondent's care and treatment of Patient B failed to meet accepted standards of medical practice in that:
1. Respondent, as a physician assistant, made no attempt at the utilization of non-controlled pain management analgesics and adjuvant physical modalities in therapeutics prior to prescribing Patient B a narcotic based analgesic.
 2. Respondent, as a physician assistant, failed to document his treatment of patient B.
- C. Respondent, on occasions from on or about the winter of 1987 to on or about the summer of 2009, consumed alcohol in excessive amounts.

SPECIFICATION OF CHARGES

FIRST 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 two or more of the following:

1. The facts in paragraphs A and A.1, A and A.2, B and B.1, and/or B and B.2.

SECOND SPECIFICATION
FAILURE TO MAINTAIN A RECORD

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient as alleged in the facts of any one of the following:

2. The facts in paragraphs A and A.2 and/or B and B.2.

THIRD SPECIFICATION
ABUSER OF ALCOHOL

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (8) by being an abuser of alcohol.

3. The facts in paragraph C.

DATED: *December 16*, 2011

REDACTED SIGNATURE _____

Peter D. Van Buren
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT B
Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license to practice as a physician (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. 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; 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.
4. 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 Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. 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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
6. The probation period shall 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.
7. 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.

8. 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.
9. Respondent shall remain free from alcohol and all other mood altering substances other than those prescribed for Respondent's treatment by a licensed health care professional than those prescribed for Respondent's treatment by a licensed health care professional aware of Respondent's history of chemical dependency. Respondent shall not self-prescribe any medications.
10. Respondent shall notify all treating physicians of Respondent's history of substance abuse. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
11. Within thirty (30) days of the effective date of the Consent Order, Respondent shall practice only when monitored by qualified health care professional monitors: a Sobriety Monitor, Practice Supervisor and a Therapist. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

All monitors shall be proposed by Respondent and approved, in writing, by the Director of OPMC before Respondent may practice after the effective date of this Order. Within 7 days of learning the approved monitor is no longer willing or able to serve, Respondent shall submit the name of a proposed successor to the Director of OPMC. Monitors shall not be family members or personal friends or be in professional relationships that would pose a conflict with monitoring responsibilities. All monitors shall execute acknowledgment forms provided by OPMC certifying familiarity with Respondent's history of substance abuse, with this Order and its terms, and acknowledging a willingness to comply with the monitor's reporting responsibilities regarding Respondent's compliance with the terms of this Order.

- a. Respondent shall ensure that the monitors are familiar with Respondent's history of substance abuse and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
- b. Respondent shall submit to random, unannounced observed blood, breath and/or urine screens for the presence of drugs and alcohol (hereafter "drug screen"), when requested by a monitor. The monitoring shall be on a random, unannounced, directly-observed, 7-day-a-week, 24-hour-a-day basis. Respondent shall report for a drug screen within 4 hours of being contacted by a monitor. Monitors shall report to OPMC immediately if Respondent refuses or delays a test or if a test is positive for alcohol, or any other unauthorized drug or substance. Respondent shall avoid all substances that may cause positive urine drug screens, such as poppy seeds, mouthwash or cough medicine. Any positive test result shall constitute a violation of the terms of this Order.
- c. Respondent shall meet regularly with a Sobriety Monitor. During the first 12 months of monitoring, the Sobriety Monitor shall obtain drug screens at a frequency of no less than 6 times per month. If Respondent is compliant throughout the first 12-month period, subsequent drug screens shall be obtained at a frequency to be proposed by the Sobriety Monitor and approved by OPMC. The Sobriety Monitor shall submit quarterly reports to OPMC certifying Respondent's sobriety or lack of sobriety. These reports are to include

forensically valid results of all drug screens performed and an assessment of self-help group (e.g., AA/NA/Caduceus) attendance and 12-step progress.

- d. Respondent shall practice only when supervised in medical practice by a licensed physician (hereafter "Practice Supervisor"). 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 Respondent's medical practice. The Practice Supervisor shall oversee Respondent's compliance with the terms of practice imposed by the Order and Respondent's prescribing, administering, dispensing, inventorying, wasting and disposal of controlled substances. The Practice Supervisor shall report to OPMC immediately any suspected impairment, inappropriate behavior, questionable medical practice, possible misconduct, or violation by Respondent of any of the terms of this Order. The Practice Supervisor shall submit quarterly reports to OPMC regarding the quality of Respondent's medical practice and prescribing practices, any unexplained absences from work, and certifying Respondent's compliance or detailing Respondent's failure to comply with each term imposed.
 - e. Respondent shall engage and continue in therapy with a treating health care professional (hereinafter "Therapist"). Respondent shall cause the Therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Therapist. The Therapist shall report to OPMC immediately if Respondent leaves treatment against medical advice or displays any symptoms of a suspected or actual relapse.
12. At the direction of the Director of OPMC, Respondent shall submit to evaluations by a board-certified psychiatrist, licensed mental health practitioner or other health care professional or program designated by the Director (hereafter "Evaluator.") Respondent shall provide the Evaluator with a copy of this Order and copies of all previous treatment records. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Evaluator. The Evaluator shall report to the Director regarding Respondent's condition and fitness or incapacity to practice medicine. Respondent shall comply with all treatment recommendations based upon the evaluation; failure to comply with such treatment recommendations shall constitute professional misconduct.
13. Respondent shall enroll, or continue enrollment, in the Committee for Physician Health (CPH) and shall engage in a contract with CPH that defines the terms, conditions and duration of Respondent's recovery program. Respondent shall comply with the contract. Respondent shall give written authorization for CPH to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract and with this Order, including full access to all records maintained by CPH will respect to Respondent;
- a. Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's impairment is not substantially alleviated by treatment;
 - b. Respondent shall cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.

14.

Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.