

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

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

Sue Kelly  
Executive Deputy Commissioner

September 21, 2012

**CERTIFIED MAIL-RECEIPT REQUESTED**

Basya Veyberman Herbert, M.D.

REDACTED

Re: License #233244

Dear Dr. Herbert:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-192. This Order of Conditions pursuant to Public Health Law Section 230 is effective September 28, 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

cc: David L. Adelson, Esq.  
Kern Augustine Conroy & Schoppmann, P.C.  
1325 Franklin Avenue, Suite 255  
Garden City, NY 11530

**IN THE MATTER  
OF  
BASYA HERBERT, M.D.**

**ORDER  
OF CONDITIONS  
PURSUANT TO  
NEW YORK PUBLIC  
HEALTH  
LAW § 230**

Upon the application of BASYA HERBERT, M.D. (Licensee), in the attached Stipulation and Application for an Order of Conditions, pursuant to New York Public Health Law § 230 (Application), which is made a part of this Order of Conditions, pursuant to New York Public Health Law § 230 (Order), it is agreed that:

- the Application and its terms are adopted; and
- this Order shall be effective upon issuance by the Board, either by mailing of a copy of this Order by first class mail to Licensee at the address in the attached Application or by certified mail to Licensee's attorney, or upon facsimile transmission to Licensee or Licensee's attorney, whichever is first.

SO ORDERED.

DATE: 9/20/2012

REDACTED

ARTHUR S. HENGERER, 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  
BASYA HERBERT, M.D.**

STIPULATION AND  
APPLICATION  
FOR AN ORDER  
OF CONDITIONS  
PURSUANT TO  
NEW YORK PUBLIC  
HEALTH LAW § 230

BASYA HERBERT, M.D., represents that all of the following statements are true:

That on or about July 7, 2004, I was licensed to practice as a physician in the State of New York and issued License No. 233244 by the New York State Education Department.

My current address is REDACTED I was most recently affiliated with the following hospitals and/or facilities: Strong Memorial Hospital, Rochester, New York; and Hyland Hospital, Rochester, New York.

I will notify the Director of the Office of Professional Medical Conduct ("the Director") of any change in my residence, employment or medical practice addresses or affiliations.

I understand that the New York State Board for Professional Medical Conduct ("the Board") has investigated me regarding the issues set forth in attached Exhibit "A".

I request that the Board and the Director in reliance upon the results of the investigation to date, conclude the investigation of these issues, provided I successfully and without incident comply with the Conditions set forth below. In consideration of the Board and the Director granting this Application, and upon the Board's election not to bring disciplinary charges against me, I agree that the Board and the Director shall issue an Order of Conditions, pursuant to New York Public Health Law § 230. Except as specified

below, the terms and conditions imposed by this Order shall remain in effect for 5 years from the Order's effective date, and shall set Conditions upon my practice as set forth in the attached Exhibit "B".

I stipulate that my failure to comply with these conditions shall constitute professional misconduct as defined by New York Education Law § 6530(29).

I understand that nothing in this Application shall be construed as an admission by me of any act of alleged misconduct or as a finding of misconduct as to those issues referred to in Exhibit "A." I deny any acts of misconduct and reserve my right to assert all defenses I may have in any later or other proceeding.

I understand and agree that my failure to comply with, successfully complete, or satisfy any of the material conditions of this Order, shall vest the Director with the authority, in the exercise of reasonable discretion, to vacate this agreement and shall permit the Director to pursue further investigation and/or prosecution of misconduct charges against me as to the issues set forth in Exhibit "A" to the full extent authorized by the New York Public Health Law and the New York Education Law.

I understand that an Order issued upon this Application does not bar prosecution for professional misconduct based upon allegations of violations of New York Education Law § 6530 unrelated to the issues set forth in Exhibit "A", whether those alleged violations occurred before or after this Application. The Director may, at such time, also direct counsel to prepare charges that include allegations as to the issues set forth in Exhibit "A".

I agree that, if the Board grants this Application, the Chair of the Board shall issue an Order of Conditions in accordance with its terms. I further agree that the Department of

Health shall notify the National Practitioner Data Bank and the Federation of State Medical Boards of this Order of Conditions, pursuant to New York Public Health Law § 230, and that the change in my licensure status is not disciplinary in nature. This Order of Conditions shall be posted on the Department of Health website(s).

I make this Application of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Application, I waive my right to contest the Order for which I apply, whether administratively or judicially, I agree to be bound by the Order, and I ask that the Board grant this Application.

I understand and agree that the attorney for the Department of Health, 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 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: 9/11/2012

REDACTED

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BASYA HERBERT, M.D.  
LICENSEE

The undersigned agree to Licensee's attached Order of Conditions and to its proposed terms and conditions.

KERN, AUGUSTINE, CONROY &  
SCHOPPMANN, P.C.

DATE: 9-11-12

By: REDACTED

DAVID L. ADELSON, ESQ.  
Attorney for Licensee

DATE: 9/13/12

REDACTED

JEFFREY J. CONKLIN, ESQ.  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: Sept 26, 2012

REDACTED

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

**EXHIBIT "B"**

**CONDITIONS**

- 1) Licensee shall not practice medicine unless and until an evaluator, pre-authorized by the Director of OPMC, shall issue a report determining that Licensee is fit to practice as a physician. Until licensee shall be so deemed to be fit to practice, said Licensee shall be precluded from reliance upon her license to practice medicine to exempt one from the license, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated, or certified by the Board of Regents, Department of Education, Department of Health or the Department of State.
- 2) Licensee's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Licensee as defined in New York Education Law §§ 6530 or 6531 shall constitute a violation of this Order and may subject Licensee to an action pursuant to New York Public Health Law § 230.
- 3) Licensee 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, with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Licensee 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 120 days after the Order's effective date and shall

continue until the full term of the Order has run, and until any associated period of conditions and all terms and conditions have been completed and satisfied. My failure to comply with this condition, if proven and found at a hearing pursuant to New York Public Health Law § 230(10), shall constitute professional misconduct as defined in New York Education Law § 6530(29).

- 4) Licensee shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719 with the following information, in writing, and ensure that this information is kept current: a full description of Licensee'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. Licensee shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
- 5) 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 Licensee. Licensee shall respond in a timely manner to all OPMC requests for written periodic verification of compliance with the terms of this Order, meet in person with the Director's designee, and respond promptly and provide all documents and information within Licensee's control to OPMC, as directed. This



Condition shall take effect upon the Order's effective date and will continue while Licensee possesses a license.

- 6) 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 these practices.
- 7) Licensee shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
- 8) The Director may review Licensee's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts and/or electronic records; and interviews or periodic visits with Licensee and staff at Licensee's practice locations, whether at those locations or OPMC offices.
- 9) Licensee shall provide access for DOH personnel to Licensee's office(s) to verify Licensee's compliance with this Order. This access shall include, but not be limited to, on-site inspections, observation and interviews.
- 10) Licensee shall engage and continue in therapy with a treating health care professional (hereafter "Therapist"). Licensee shall cause the Therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Licensee is in compliance with the treatment plan. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Licensee to

Licensee's Therapist. The Therapist shall report to OPMC immediately if Licensee leaves treatment against medical advice or displays any symptoms of a suspected or actual relapse.

- 11) 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: 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.
- 12) Licensee 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 Licensee's recovery program. Licensee shall comply with the contract. Licensee shall give written authorization for CPH to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Licensee is in compliance with the contract and with this Order, including full access to all records maintained by CPH with respect to Licensee.
  - a) Licensee shall cause CPH to report to OPMC promptly if Licensee refuses to comply with the contract, refuses to submit to treatment or if Licensee's condition is not substantially alleviated by treatment.
  - b) Licensee shall cause CPH to report immediately to OPMC if Licensee is regarded at any time to be an imminent danger to the public.

- 13) The period of Conditions shall toll when Licensee is not engaged in active medical practice in New York State for 30 consecutive days or more. Licensee shall notify the Director, in writing, if Licensee is not currently engaged in or intends to leave active medical practice in New York State for 30 consecutive days or more and Licensee shall then notify the Director again at least 14 days before returning to active medical practice in New York State. Upon Licensee's return to active medical practice in New York State, the period of Conditions shall resume and Licensee shall fulfill any unfulfilled 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.
- 14) Licensee shall comply with all terms, conditions, restrictions and limitations imposed by this Order, and all its terms and Conditions, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or violation of any of the terms of this Order, the Director and/or the Board may initiate a proceeding against Licensee under New York Public Health Law § 230.
- 15) Licensee's failure to comply with this Order, if proven, shall constitute professional misconduct as defined by New York Education Law, including but not limited to New York Education Law § 6530(29), which defines professional misconduct to include "violating any.... condition.... Imposed on the Licensee pursuant to section two hundred thirty of the public health law."