



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

May 9, 2018

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Edward Paul Foley, D.O.



Re: License No. 194267

Dear Dr. Foley:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 18-103. This order and any penalty provided therein goes into effect May 16, 2018.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,


Robert A. Catalano, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Daisy P. Paglia, Esq.
Thuillez, Ford, Gold, Butler & Monroe, LLP.
20 Corporate Woods Blvd.
Albany, New York 12211

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

| | |
|---------------------|---------------|
| IN THE MATTER | MODIFICATION |
| OF | OF |
| EDWARD P. FOLEY, DO | CONSENT ORDER |

This matter was brought to the New York State Board for Professional Medical Conduct (BPMC) for decision at the request of Edward P. Foley, DO, (Licensee), License No. 194267. Licensee was subject to BPMC Order No. 12-229 (Order), effective November 9, 2012. The Order suspended Licensee's license to practice medicine for an indefinite period of no less than twelve (12) months, retroactive to May 1, 2010. 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 clinically competent to practice as a physician.

A meeting of the Committee was held in the above-entitled proceeding on October 30, 2017. Licensee appeared with his attorney, Daisy F. Paglia, Esquire, before a Committee of the State Board for Professional Medical Conduct consisting of Lyon M. Greenberg, MD, Chair, Jeffrey Perry, DO, and Janet Miller, RN. 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 that he shall be allowed to practice medicine subject to the following conditions.

THEREFORE, IT IS HEREBY ORDERED THAT:

The suspension on the Licensee's license to practice medicine 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 remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall: report to the Department all information required by the Department to develop a public physician profile for the Licensee; continue to notify the department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his profile information within six months prior to the expiration date of the Licensee's registration period. Licensee shall submit changes to his physician profile information either electronically using the department's secure web site or on forms prescribed by the Department, and Licensee shall attest to the truthfulness, completeness and correctness of any changes Licensee submits to the department. This condition shall take effect 120 days after the Order's effective date and shall continue so long as Licensee remains a licensee in New York State. Licensee's failure to comply

with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found.

Licensee shall provide the Director of OPMC with the following information, in writing, 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, regardless of tolling.

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 **ten (10) years** from the effective date of this Order.

Licensee may not commence the practice of medicine in New York State until all proposed monitors have been approved in writing by the Director of OPMC.

1. The period of probation shall be tolled during periods in which the Licensee is not engaged in the active practice of medicine 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 of medicine 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 impose as reasonably relate to Licensee's history 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 substance use disorder and mental illness. Licensee shall not self-prescribe any medications.

3. Licensee shall be monitored by a qualified health care professional (Toxicology Monitor) proposed by Licensee and approved in writing by the Director of the OPMC. The Toxicology Monitor is to be familiar with Licensee's history of substance use disorder, mental illness 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 Toxicology Monitor is no longer willing or able to serve.

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

c. The Toxicology 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 Toxicology 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 Toxicology Monitor **within four (4) hours** of being contacted by the Toxicology 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 toxicology monitoring for a period of 15 days or more, Licensee shall notify his Toxicology 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. Licensee shall not engage in the independent practice of medicine until he completes a fellowship or a structured retraining program. Licensee shall identify a Preceptor, a physician who is board certified preferably in the same specialty, to be approved in writing by the Director of OPMC. The Licensee shall cause the Preceptor to:

- a. Develop and submit to the Director of OPMC for written approval a remediation plan, which addresses the deficiencies/retraining recommendations identified in the December 2016 Clinical Competency Assessment (CCA) conducted by The Center for Personalized Education for Physicians (CPEP). This proposal shall establish a timeframe for completion of the remediation program.
 - b. Submit progress reports on a quarterly basis certifying whether the Licensee is fully participating in the personalized continuing medical education program and is making satisfactory progress toward the completion of the approved remediation plan.
 - c. Report immediately to the Director of OPMC if the Licensee withdraws from the program and report promptly to OPMC any pattern of noncompliance by the Licensee.
 - d. At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by the Licensee toward remediation of all identified deficiencies.
5. Upon the completion of the retraining program, Licensee shall practice no more than fifty (50) hours per week, inclusive of his on-call schedule. Licensee may work up to sixty (60) hours per week, on occasion, with notification to and approval from the Director of OPMC. After successfully completing three (3) years of probation, Licensee may submit a written request to resume full-time practice for review by and written approval from the Director of OPMC.

6. For the duration of the probation, Licensee shall practice medicine only in a group setting that has been proposed, in writing, by the Licensee and approved, in writing, by the Director of OPMC. Licensee shall not engage in the solo practice of medicine.

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 must be on-site at all locations and must 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 substance use disorder, mental illness and 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 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.

b. 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

c. The Practice Supervisor shall oversee the Licensee's prescribing, administering, dispensing, ordering, inventory and wasting of controlled substances.

d. The Practice Supervisor shall immediately report any suspected or actual impairment, inappropriate behavior, deviation from accepted standards of medical care or possible misconduct to OPMC.

e. The Practice Supervisor shall notify OPMC immediately if Licensee violates any term(s) of this Order.

8. Licensee shall enroll in and successfully complete a minimum of fifty (50) hours of Category 1 continuing medical education (CME) each year in his practice specialty. Licensee shall also enroll in and successfully complete CME programs as directed by the Director of OPMC, to include, but not be limited to, CME in the appropriate prescribing of controlled substances. Licensee shall provide written confirmation to OPMC of his completion of the CME courses.

9. Licensee shall not treat nor prescribe medications for any friends or family members. Licensee shall only treat or prescribe medications to patients with whom he has established a legitimate doctor/patient relationship.

10. Licensee shall continue in therapy with qualified health care professionals (Therapist and Psychiatrist), proposed by Licensee and approved, in writing, by the Director of OPMC. The Therapist and Psychiatrist are to be familiar with the Licensee's history of substance use disorder and mental illness, and with the terms of this Order. Licensee will continue in treatment with the Therapist at least weekly or at a frequency determined by the Therapist, under a treatment plan approved by the Director of OPMC, for the duration of the probation. Licensee will continue in treatment with the Psychiatrist at least quarterly, under a treatment plan approved by the Director of OPMC, for the duration of the probation. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Licensee to Licensee's Therapist or Psychiatrist. Licensee shall submit the name of a proposed successor within seven (7) days of becoming aware that the Licensee's approved Therapist or Psychiatrist is no longer willing or able to serve in that capacity.

a. The Therapist/Psychiatrist 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/Psychiatrist shall report to OPMC, within 24 hours, any pattern of absences, suspected or actual impairment, failure to comply or discontinuation of recommended treatment, including any prescribed medications, by Licensee.

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. 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/substance use disorders 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.

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

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

15. Licensee shall inform all treating physicians or other health care practitioners of Licensee's history of substance use disorder and mental illness. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. Should Licensee practice medicine in another state, he shall provide written authorizations for the State Medical Board and/or the Physician Health Program to provide the Director of OPMC with any/all information or documentation as requested by OPMC.


22. Licensee shall comply with all terms, conditions, restrictions and limitations to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance of the Order. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Licensee as may be authorized pursuant to the law.

As Licensee agreed in the Consent Order, failure to comply with any of the conditions described above may result in disciplinary action.

This Order shall be effective upon issuance.

Dated: _____

May 3, 2018


Lyon M. Greenberg, MD
Committee Chair
NYS Board for Professional Medical Conduct