

NEW YORK
state department of
HEALTH

Public

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

Sue Kelly
Executive Deputy Commissioner

February 11, 2014

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dana Lee Gage, M.D.

REDACTED

RE: License No. 145632

Dear Dr. Gage:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 14-30. This Order and any penalty provided therein goes into effect February 18, 2014.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 2784
Empire State Plaza
Albany, New York 12237

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: James R. McCarl, Esq.
18 Bridge Street
Montgomery, NY 12549

IN THE MATTER

OF

Dana Gage, M.D.

CONSENT

ORDER

Upon the application of (Respondent) Dana Gage, 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: 2/11/2014

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
Dana Gage, M.D.

CONSENT
AGREEMENT

Dana Gage, M.D., represents that all of the following statements are true:

That on or about April 3, 1981, I was licensed to practice as a physician in the State of New York, and issued License No. 145632 by the New York State Education Department.

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, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I agree not to contest the allegation, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand, and:

Pursuant to N.Y. Pub. Health Law §§ 230-a(8), I shall be subject to the requirement of enrolling in and completing a continuing educational course in record retention. This continuing educational program is subject to the Director of OMPC's prior written approval and shall be completed within eighteen (18) months from the effective date of this Order, and:

Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of \$5,000, to be paid in as follows:

- \$2500 to be paid within 90 days of the effective date of this Order.
- The full amount of the \$5000 to be paid within 180 days of the effective date of this Order

Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 2784
Albany, New York 12237

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

With respect to all of Respondent's medical practices, present and former, including but not limited to the practice that was located at 10 Little Britain Rd., Newburgh, NY 12550, Respondent shall, within 30 days of the Consent Order's effective date:

Make arrangements for the control and maintenance of all patient medical records. Licensee shall notify OPMC of these arrangements, including the

name, address, and telephone number of an appropriate and acceptable contact person who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the records is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or request that the original medical record be sent to another health care provider, a copy of the record, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

With respect to Patient A, continue to make a good faith effort to locate Patient A's records as referenced in Paragraph A of the Factual Allegations set forth in Exhibit "A".

That Respondent 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 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 or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her 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 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent'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; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this 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 Order.

Respondent shall meet with a person designated by the Director of 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 this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and 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 N.Y. Pub. 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 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 transmission to me or my attorney, whichever is first. The Consent Order, this 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 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, 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 OPMC and the Chair of the Board 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

2/8/14

REDACTED

DANA GAGE, M.D.
Respondent

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

DATE: 3-8-14

REDACTED

JAMES R. McCARL, ESQ.
Attorney for Respondent

DATE: 2/10/14

REDACTED

JOHN THOMAS VITI
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 2/10/14

REDACTED

For KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

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

IN THE MATTER

OF

Dana Gage, MD

STATEMENT

OF

CHARGES

Dana Gage, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 3, 1981, by the issuance of license number 145632 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. During the period from April 2012, to date, Respondent has failed to provide a copy of patient information regarding Patient A as required by N.Y. Pub. Health Law § 18 upon the written request of Patient A.

[Patient A, is identified in the attached "Appendix"]

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

**FAILING TO MAKE AVAILABLE TO A PATIENT, UPON REQUEST,
COPIES OF DOCUMENTS**

Respondent, is charged with committing professional misconduct as defined in N.Y. Education Law §6530(40) failing to provide access by qualified persons to patient information in accordance with the standards set forth in section eighteen of the public health law as added by chapter 497 of the laws of 1986, as alleged in the facts of:

1. Paragraph A.

DATE: October 10, 2013
New York, New York

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct