



**Department
of Health**

Public

ANDREW M. CUOMO
Governor

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

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

June 22, 2015

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Kevin S. Balter, M.D.



Re: License No. 172885

Dear Dr. Balter:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 15-157. This order and any penalty provided therein goes into effect June 29, 2015.

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,



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

Enclosure

cc: Eugene D. Napierski, Esq.
Napierski VanDenburgh Napierski & O'Connor, LLP
296 Washington Avenue Ext., #3
Albany, NY 12203

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

**IN THE MATTER
OF
KEVIN SCOTT BALTER, M.D.**

**CONSENT
ORDER**

Upon the application of (Respondent) KEVIN SCOTT BALTER, 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: 6/19/2015


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
KEVIN SCOTT BALTER, M.D.**

CONSENT
AGREEMENT

KEVIN SCOTT BALTER, M.D., represents that all of the following statements are true:

That on or about October 30, 1987, I was licensed to practice as a physician in the State of New York, and issued License No. 172885 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. By making this application, I assert that I do not currently practice medicine in New York State or in any setting or jurisdiction where that practice is predicated upon my New York State medical license ("New York Practice").

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications 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 allegations, in full satisfaction of the charges against me, and agree to the following penalty:

- Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of twenty-four (24) months, subject to the terms set forth in attached Exhibit "B." The period of probation shall not commence until such time as I resume New York Practice and shall thereafter be subject to the tolling provisions set forth in Paragraph 8(d) of those terms.

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

That, should Respondent in the future determine to commence New York Practice, Respondent shall, prior to commencing such practice, provide ninety (90) days advance notice in writing to the Director of OPMC (the "Director").

That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a.

Respondent shall be precluded from engaging in New York Practice until he successfully demonstrates fitness to practice, to the satisfaction of the New York State Board for Professional Medical Conduct, as provided in Exhibit B, and complies with the terms of Exhibit B and any additional terms imposed by the Director. Respondent shall not commence New York Practice until after Respondent receives the Director's written acknowledgment of such demonstration and compliance. Respondent shall be subject to

any further Conditions the Director may impose upon Respondent's New York Practice based on matters underlying this Consent Agreement and/or any circumstances or information known to the Director at the time of Respondent's proposed commencement of New York Practice. Respondent, by making this Application, stipulates that the Director shall be authorized in his sole reasonable discretion to impose whatever further Conditions the Director deems appropriate, and Respondent further stipulates that Respondent's failure to comply with such Conditions shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

Respondent shall, within 30 days of the effective date of this Consent Order, inactivate his registration with the New York State Education Department, and shall remain in inactive status until such time as he is permitted, pursuant to the terms of this Consent Order, to resume New York Practice. If and when Respondent is permitted to resume New York Practice, Respondent shall, thereafter, 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 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 Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; 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. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; 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 the 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 6/16/15



KEVIN SCOTT BALTER, M.D.
RESPONDENT

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

DATE: 6/17/15


EUGENE DANIEL ~~M~~APIERSKI, ESQ.
Attorney for Respondent

DATE: 6/17/15


DAVID W. QUIST
Associate Attorney
Bureau of Professional Medical Conduct

DATE: 6/18/15



KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

IN THE MATTER

OF

KEVIN SCOTT BALTER, M.D.

STATEMENT

OF

CHARGES

KEVIN SCOTT BALTER, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 30, 1987, by the issuance of license number 172885 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 24, 2013, the Nebraska Department of Health and Human Services, Division of Public Health ("Department") issued an Order on Agreed Settlement ("Nebraska Order"), based on an Agreed Settlement signed by Respondent on or about May 1, 2013. As set forth in the Nebraska Order, Respondent admitted the allegations set forth in the associated Petition for Disciplinary Action. Those allegations provided that Respondent had engaged in unprofessional conduct by having, in relevant part, 1) prescribed, administered, dispensed, given, or sold any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose and 2) knowingly or intentionally acquired or obtained or attempted to acquire or obtain possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception or subterfuge, in violation of the (Nebraska) Uniform Controlled Substances Act.

B. Pursuant to the terms of the Nebraska Order, Respondent was placed on probation for a period of one year, subject to conditions including, among others, a prohibition against prescribing controlled substances for himself, or possessing controlled substances other than pursuant to a prescription from a licensed physician or authorized licensed practitioner (not himself) for a diagnosed medical condition, and additional conditions relating to monitoring, evaluation and treatment.

C. The conduct resulting in the Department's Nebraska Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York Education Law Sections 6530(2) (fraud), 6530(3) (negligence on more than one occasion) and/or 6530(16) (failure to comply with substantial provision of law governing the practice of medicine).

D. On or about January 14, 2015, the State Medical Board of Ohio ("Board") issued an Entry of Order ("Ohio Order") based on a Report and Recommendation filed with the Board on or about December 16, 2014. The matters resulting in the Ohio Order consisted of two cases before the Board, 14-CRF-015 and 14-CRF-083, which were combined and addressed together. The former case was based on the Nebraska Order. The latter case raised additional issues related to mental or physical illness.

E. Pursuant to the terms of the Ohio Order, Respondent was placed on probation for a period of at least two years subject to numerous terms, including a requirement for

psychiatric assessment and treatment, participation in the distressed physician program, oversight by a monitoring physician, and numerous reporting requirements.

F. The conduct resulting in the Ohio Order against Respondent would, in relevant part, constitute misconduct under the laws of New York State pursuant to New York Education Law Sections 6530(7) (practicing while impaired).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§ (2), (3), (7) and/or (16)) as alleged in the facts of the following:

1. The facts in paragraphs A through C.
2. The facts in paragraphs D through F.

SECOND SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a

license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(2), (3), (7) and/or (16) as alleged in the facts of the following:

3. The facts in paragraphs A through C.
4. The facts in paragraphs D through F.

DATE: April 22, 2015
Albany, New York

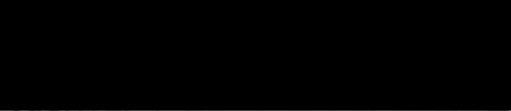

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

- 1) Prior to engaging New York Practice, Respondent shall demonstrate 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 successfully completed a course of therapy and ongoing evaluation, 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 fit to engage in the active practice as a physician, shall be made solely by the Committee.
- 2) 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 determination of Respondent's fitness to practice. 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 supervising physician referred to in paragraph 5c.
 - b) The signed acknowledgment and curriculum vitae from the proposed health care professional referred to in paragraph 5d.

- c) Certified true and complete copies of all evaluation and treatment records relating to Respondent's treatment for psychological, psychiatric, mental health, and/or any other conditions, 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 suspension was in effect.
- d) 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). Documentation shall include but not be limited to verification of compliance and results of forensically valid screening.
- e) 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.
- f) A current, independent, in-psychiatric and, if applicable, in-depth chemical dependency evaluation by a board-certified psychiatrist.
- g) 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 fit 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 any screenings since the date of the original submissions referred to in paragraph 3c.
 - 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 fit for active practice as a physician.

- 5) If the Chair of the Committee issues an Order finding that Respondent is fit and competent to practice medicine, the Order shall further impose a period of probation, pursuant to N.Y. Pub. Health Law § 230-a, during which Respondent's practice as a physician shall be subject to conditions imposed for a period of no less than two years. The minimum conditions shall include the following:
 - a) Respondent shall be required to comply with the terms of a continuing 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 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 and condition 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.
- d) 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.
- e) 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 issuance of an Order, 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 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 authorization to engage in New York Practice, Respondent shall be barred from requesting that a Committee be convened to hear a petition for such authorization for 9 months from the date of the denial.