



# 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 31, 2016

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Walter Zawislak, M.D.**  
[REDACTED]

**Walter Zawislak, M.D.**  
[REDACTED]

Ian H. Silverman, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Walter Zawislak, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.16-181) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

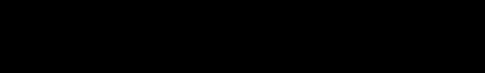
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Riverview Center  
150 Broadway – Suite 510  
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A solid black rectangular redaction box covering the signature of James F. Horan.

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

**COPY**

**IN THE MATTER  
OF  
WALTER ZAWISLAK, M.D.**

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**DETERMINATION  
AND  
ORDER  
BPMC #16-181**

A hearing was held on May 19, 2016, at the offices of the New York State Department of Health ("Department").<sup>1</sup> Pursuant to § 230(10)(e) of the Public Health Law ("PHL"), **MICHAEL J. REICHGOTT, M.D., Ph.D.**, Chairperson, **VIRGINIA R. MARTY**, and **GREGORY ALLEN THREATTE, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE ("ALJ")**, served as the Administrative Officer.

The Department appeared by Ian Silverman, Esq. A Notice of Referral Proceeding and Statement of Charges dated April 5, 2016 were served upon Walter Zawislak, M.D. ("Respondent"), who did not appear at the hearing.<sup>2</sup> There were no witnesses at the hearing. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charges that Respondent committed professional misconduct, in violation of Education Law ("Educ. Law") §§ 6530(9)(b) and 6530(9)(d), such that the penalty of

<sup>1</sup> The location of the hearing was 150 Broadway, Suite 510, Menands, New York. The references in brackets refer to exhibits ["Ex."].

<sup>2</sup> The Notice of Referral Proceeding and Statement of Charges were personally served on the Respondent on April 12, 2016, at a location in McAllen, Texas, pursuant to PHL § 230(10)(d)(i). As such, the ALJ determined that jurisdiction was established. [Ex. 1, 2; Appendix II].

Censure and Reprimand with three years' probation, with conditions, is appropriate.

### **BACKGROUND**

The Department brought the case pursuant to PHL § 230(10)(p), which provides for an expedited hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(b), "having been found guilty of 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," and § 6530(d), "having (his) license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct resulting in the disciplinary action taken against his license to practice medicine would, if committed in the state of New York, constitute professional misconduct under the laws of the state of New York.

This case is based on a Final Order of the Texas Medical Board ("Texas Board") dated February 13, 2015, finding Respondent guilty of professional misconduct resulting from the care and treatment he rendered to a patient at Memorial Hermann Southeast Hospital ("MHSB") in Houston, Texas between December 6, 2009 and December 9, 2009. The Texas Board found that Respondent's prescription practices involving high doses of Dilaudid, a narcotic, resulted in harm to a patient, inclusive of respiratory suppression, cardiac arrest, and death. The Texas Board also found that Respondent failed to properly document the patient's medical record completely and contemporaneously with the patient's overdose and death. Whether the Texas Board's findings are misconduct here hinges on whether the underlying conduct would constitute professional misconduct in New York. The Department charges that had Respondent's conduct occurred in New York, it would have constituted practicing the profession with gross incompetence, gross negligence on a

particular occasion, and failing to maintain a record of the patient which accurately reflected the evaluation of the patient, as defined in Educ. Law §§ 6530(6), 6530(4), and 6530(32), respectively. [Ex. 1, 3].

### **FINDINGS OF FACT**

The Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits ["Ex."]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Walter Zawislak, M.D., the Respondent, was licensed to practice medicine in New York on January 3, 1994, by the issuance of license number 194570 by the Educ. Department. [Ex. 1, 4].

2. On February 13, 2015, the Texas Board found the Respondent guilty of professional misconduct resulting from the care and treatment he rendered to a patient at MSHH between December 6, 2009 and December 9, 2009, which caused the patient harm. [Ex. 1, 3].

3. The Texas Board found that the Respondent breached the standard of care in the excessive administration of Dilaudid, a narcotic, to a patient, without instructions to titrate to pain or continuous monitoring and after the patient showed signs of overdose, such as being "uncomfortable, agitated, and restless." [Ex. 3].

4. The Texas Board found that as a result of Respondent's conduct, the patient suffered an overdose of the drug, which led to cardiac arrest, respiratory suppression, and death. The findings of the Texas Board also included that Respondent failed to properly treat the patient's cardiac arrest by not attending to the overdose prior to implementing Advanced Cardiac Life Support guidelines and delayed in administering Narcan, a drug used to reverse overdose. [Ex. 1, 3].

5. The Texas Board's findings also included that Respondent failed to properly document the patient's medical record to explain the causes for respiratory distress, the reasons for the large doses of Dilaudid, an explanation for the delay in resuscitation and the administration of Narcan, a description of the events leading to the cardiac arrest, and the reasons why other drugs were prescribed. [Ex. 1, 3].

6. The Texas Board found Respondent guilty of professional misconduct and ordered that he be subject to a Public Reprimand, passing of a Medical Jurisprudence Examination, completion of continuing medical education credits in ethics, risk management, and prescribing opiate medications, and completion of an assessment in Texas to determine whether an education plan is necessary. The Respondent is also subject to physician and billing/medical record monitoring. [Ex. 1, 3].

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

The Hearing Committee determined that the evidence supports sustaining the charge of having committed misconduct under Educ. Law § 6530(9)(b).

**VOTE: Sustained (3-0)**

#### **SECOND SPECIFICATION**

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(d).

**VOTE: Sustained (3-0)**

### **CONCLUSIONS OF LAW**

The Respondent did not appear at the hearing in person or by counsel. After considering the documentary evidence concerning service of the Notice of Referral Proceeding and Statement of

Charges, the ALJ ruled that the Department had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits despite Respondent's absence.

The Department's evidence demonstrated that after the Respondent administered markedly excessive dosages of Dilaudid, he failed to properly perform an evaluation of the patient or assess and monitor the patient for adverse reactions to the drug. The evidence also showed that Respondent failed to document in the patient's medical records a treatment plan, medical rationales for prescribing high dosages of a narcotic and other drugs, reasons for the delay in treating the overdose, and an explanation for not treating the symptoms of overdose. Like Texas, in cases where physicians prescribe narcotic drugs, New York requires physicians to perform assessments or physical evaluations and to take the time to monitor a patient for potential side-effects to the drugs. Additionally, similar to Texas, New York requires the proper documentation of patients' medical records to reflect results of physical assessments and explanations for drug choices, particularly in cases involving the administration of narcotics or opioids.

The Hearing Committee considered that Respondent's conduct in administering to the patient high dosages of Dilaudid, which placed the patient at risk for harm and ultimately led to the patient experiencing respiratory suppression, cardiac arrest, and death, was a serious deviation of the standard of care. Troubling to the Hearing Committee was Respondent's decision to administer a second high dose of Dilaudid without justification and after the patient began experiencing side effects from the first dose of the drug, such as restlessness and agitation. Also contemplated by the Hearing Committee were the circumstances of the patient's death, which could have been avoided had Respondent properly monitored the patient and immediately administered the proper treatment to counteract the effects of the overdose.

Respondent's failures, had they occurred in New York, would have constituted gross negligence and gross incompetence, as defined in Educ. Law §§ 6530(4) and 6530(6), respectively. It would have also amounted to a failure to maintain a record for a patient which accurately reflects the evaluation of the patient, as defined in Educ. Law § 6530(32).

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, and found that the sustained specifications indicate the Respondent's use of his medical license to render substantially inadequate medical care resulting in fatal consequences. The Respondent's non-appearance at the hearing left the Hearing Committee without an opportunity to evaluate any defenses in mitigation of his conduct or to assess any efforts he has made toward rehabilitation. As such, the Hearing Committee unanimously concluded that the evidence supports that Respondent's New York medical license be subject to the penalty of Censure and Reprimand and probation, with conditions.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine is subject to a Censure and Reprimand, and the Respondent is placed probation for a period of three years, subject to the conditions provided in the Terms of Probation (Appendix I) and tolled while the Respondent is not engaged in the practice of medicine in the state of New York;
2. The Respondent must provide 90 days' notice should he decide to return to New York to practice medicine and shall recommence the practice of medicine within the state of New York only upon the approval of the director of the Office of Professional Medical Conduct ("OPMC");
3. The Respondent must comply with the terms of this Determination and Order and all the



Terms of Probation attached to this Determination and Order; and

4. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: Albany, New York

5/29/, 2016



Michael J. Reichgott, M.D., Ph.D.  
Chairperson

Virginia R. Marty  
Gregory Allen Threatte, M.D.

TO: Walter Zawislak, M.D.



Walter Zawislak, M.D.



Ian H. Silverman, Esq.  
Assistant Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower Building – Room 2512  
Empire State Plaza  
Albany, New York 12237

## APPENDIX I

## TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and to governing law. Any act of professional misconduct by Respondent as defined by New York Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230 (10) or (19), or both.
2. Respondent shall remain in continuous compliance with all requirements of Educ. Law § 6502, including, but not limited to, the requirements that licensee register and continue to be registered with the New York Education Department and that licensee pay all registration fees. Respondent shall not exercise the option provided in Educ. Law § 6502(4) to avoid registration and payment of fees.
3. The Respondent must provide 90 days' notice should he decide to return to New York to practice medicine, and he must obtain the approval of the director of the OPMC before recommencing the practice of medicine within New York. The Respondent shall remain on probation for a period of three years, during which Respondent's practice as a physician shall be subject to conditions imposed for a period of no less than one year. The minimum conditions shall include the following:
  - a. Respondent's medical practice shall be supervised by a licensed physician ("practice supervisor") proposed by the Respondent and approved, in writing, by the director of the OPMC. The supervising physician shall be familiar with the Respondent's history and with the Texas Final Order and its conditions. The supervising physician shall supervise the 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 the Respondent's medical practice. The supervising physician shall oversee the 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 the OPMC.
    - i. The Respondent shall ensure that the supervising physician submits quarterly reports to the OPMC regarding the quality of the Respondent's medical practice, including whether diagnoses and treatments are appropriate, any unexplained absences from work, a representative

sampling of at least five percent of the patients seen by the Respondent to determine whether the patients managed are in line with what is appropriate and proper, and certifying the Respondent's compliance with each condition imposed, and detailing, if applicable, the Respondent's failure to comply.

- ii. The supervising physician shall report any questionable medical practices or possible misconduct to OPMC.
  - b. The Licensee shall provide the director of the 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.
4. Respondent shall enroll in and complete continuing medical education ("CME") courses in opiate use, emergency care, and any additional courses that the director of OPMC deems appropriate. The CME courses shall be completed no later than 60 days following the Respondent's return to New York to practice medicine.
  5. Within thirty (30) days of the effective date of the probation (this period shall toll when and if the Respondent is not practicing) Respondent shall have a medical billing specialist review his records and billing practices on a monthly basis ("billing monitor"). The billing monitor shall be proposed by Respondent and subject to the written approval of the director of OPMC.
    - a. Respondent shall make available to the billing monitor any and all records requested by the monitor.
    - b. The billing monitor shall, on a random and unannounced basis, at least monthly, examine a selection of records and billing information maintained by Respondent. The review will determine whether Respondent's medical billing practices are conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical record keeping or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

- c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the billing monitor.
  - d. Respondent shall cause the billing monitor to report quarterly, in writing, to the Director of OPMC and shall submit no less than four reports.
6. The terms set forth in paragraphs three, four, and five are the minimum probation terms related to fitness to practice to be imposed on Respondent, and other terms may be added by the director of the OPMC. All compliance costs shall be Respondent's responsibility.
7. In addition to the terms set in paragraphs three through five above, the Respondent shall also be subject to the following standard terms of probation:
  - a. The probation period shall toll when Respondent is not engaged in active medical practice in the state of New York for a period of 30 consecutive days or more. Respondent shall notify the director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York for a consecutive 30-day period. The Respondent shall then notify the director again at least 14 days before returning to active practice. Upon the Respondent's return to active practice in New York, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the director may impose as reasonably necessary to protect the public health.
  - b. The Respondent's professional performance may be reviewed by the director of the OPMC. This review may include, but shall not be limited to, a review of office records, patient records, hospital charts, and/or electronic records, as well as interviews and/or periodic visits with Respondent and staff at practice locations or the OPMC offices.
  - c. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. The Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
  - d. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical record shall contain all information required by state rules and regulations regarding controlled substances.
  - e. Respondent shall comply with the Determination and Order and all the associated terms, conditions, restrictions, limitations and penalties and shall be responsible for all associated compliance costs. Upon receiving evidence of non-compliance with the Order, or any violation of its terms, the director of the OPMC and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against Respondent authorized by law.

## APPENDIX II

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

IN THE MATTER  
OF  
WALTER ZAWISLAK, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: Walter Zawislak, M.D. Walter Zawislak, M.D.

PLEASE TAKE NOTICE THAT:

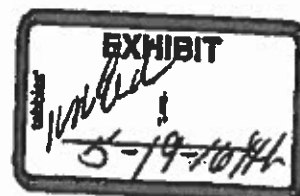
An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on May 19<sup>th</sup>, 2016, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.<sup>1</sup>

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150

<sup>1</sup> For GPS purposes, enter "Menands", not "Albany".



Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. You may also file a written brief and affidavits with the Committee. All such documents shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge,

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

**YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here 



The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

**THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE BE REVOKED OR  
SUSPENDED, AND/OR THAT YOU BE FINED OR  
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW  
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED  
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN  
THIS MATTER.**

DATED: Albany, New York  
April 5, 2016

  
MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Ian H. Silverman  
Assistant Counsel  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

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

IN THE MATTER  
OF  
WALTER ZAWISLAK, M.D.

STATEMENT  
OF  
CHARGES

Walter Zawislak, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 3, 1994 by the issuance of license number 194570 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about February 13, 2015 the Texas Medical Board issued a Final Order (hereafter "Texas Board Order") against the Respondent. By the terms of the Texas Board Order the Respondent was publicly reprimanded, required to pass the Medical Jurisprudence Examination with a score of 75 or above, required to complete at least 24 hours of continuing medical education including at least eight hours in the topic of ethics, at least eight hours in the topic of risk management, and eight hours in prescribing opiate medications. Respondent was also required to contact the Texas A&M Health Science Center Rural and Community Health Institute for the purpose of scheduling an assessment of at least two days or an equivalent course to determine whether the Respondent should undergo an education plan. The Texas Board Order was based on the Respondent's care and treatment of one patient from December 6, 2009 to December 9, 2009. The Texas Board Order concluded that Respondent (1) failed to meet the standard of care, (2) committed negligence in the performance of medical services, (3) failed to use proper diligence in his professional practice, (4) failed to safeguard against potential complications, (5) failed to personally monitor or

ensure continuous monitoring of the patient and failed to prescribe or administer a drug or treatment that was nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed, and (6) failed to maintain an adequate medical record.

B. Respondent's conduct as described above upon which the finding of unprofessional conduct in Texas was based would, if committed in New York State, constitute professional misconduct under the laws of the State of New York as follows:

1. New York Education Law §6530(4) (practicing the profession with gross negligence on a particular occasion;
2. New York Education Law §6530(6) (practicing the profession with gross incompetence; and/or
3. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation of the patient.)

**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 §§ 6530 (4), (6) and/or (32) ) as alleged in the facts of the following:

1. The facts in Paragraphs A and B.

**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 (4), (6) and/or (32) ) as alleged in the facts of the following:

2. The facts in Paragraphs A and B.

DATE: <sup>APRIL 5</sup> March 5, 2016  
Albany, New York

  
Michael A. Hiser  
Deputy Counsel  
Bureau of Professional Medical Conduct