NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

June 28, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Robert Gumberts, D.O.

REDACTED

Re: License No. 209230

Dear Dr. Gumberts:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 11-160. This order and any penalty provided therein goes into effect July 5, 2011.

Please direct any questions to: Board for Professional Medical Conduct, 433 River Street, Suite 303, Troy, NY 12180, telephone # (518)402-0863.

Sincerely,

REDACTED

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

Enclosure

cc: Mark G. Farrell, Esq.
4455 Transit Road, Suite 2C
Williamsville, NY 14221

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

IN THE MATTER OF ROBERT GUMBERTS, D.O.	CONSENT ORDER BPMC No. 11-160

Upon the application of **ROBERT GUMBERTS, D.O.** 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: 6/27/11

REDACTED

KENDRICK A. SEARS, 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 ROBERT GUMBERTS, D.O.	CONSENT AGREEMENT AND ORDER

ROBERT GUMBERTS, D.O., represents that all of the following statements are true, deposes and says:

That on or about December 23, 1997, I was licensed to practice as a physician in the State of New York, and issued License No. 209230 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 Two (2) specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

In full settlement of the charges, I do not contest the Second Specification and:

I agree to never practice medicine as a physician in New York State during the balance of my current registration period. Further, I agree that, upon the expiration of my current registration on October 31, 2011, I shall be precluded from any future registration or issuance of a medical license in New York State. [Limitation on registration or issuance of any further license pursuant to Public Health Section 230-a(6)].

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.

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 6/15/11

REDACTED

ROBERT GUMBERTS, D.O.
RESPONDENT

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

DATE: 6/15/11

REDACTED

MARK G. FARRELL, ESQ.
Attorney for Respondent

DATE: 6/17/11

REDACTED

MICHAEL G. BASS, ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: 6/23/11

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

STATE OF NEW YORK DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER OF ROBERT GUMBERTS, D.O. PM-10-06-4046-A	STATEMENT OF CHARGES

ROBERT GUMBERTS, D.O., Respondent, was authorized to practice medicine in New York state on December 23, 1997, by the issuance of license number 209230 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 18, 2005, Respondent became the subject of the Consent Agreement (BPMC #03-347M) *In the Matter of Robert Gumberts, D.O.*. The Consent Agreement, among other things, placed Respondent on probation for a period of 5 years, and required that Respondent remain drug and alcohol free throughout the term of probation.

B. On or about May 31, 2010, Respondent was arrested for and charged with, among other things, Aggravated Driving While Intoxicated. On that date, Respondent had a .23% blood alcohol content.

C. On or about November 19, 2010, in the Williamsville Village Court, State of New York, Respondent was convicted of Aggravated Driving While Intoxicated, a misdemeanor.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

VIOLATION OF A BOARD ORDERED CONDITION OR LIMITATION

Respondent is charged with professional misconduct under New York Education Law Section 6530(29) by reason of his having failed to comply with a condition or limitation imposed on Respondent by a Consent Agreement with the State Board for Professional Medical Conduct, in that Petitioner charges:

1. The facts in Paragraphs A and B.

SECOND SPECIFICATION

CONVICTION OF A CRIME IN NEW YORK STATE

Respondent violated New York Education Law Sec. 6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

3. The facts in Paragraph C.

DATED: June 17, 2011
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct