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

Sue Kelly
Executive Deputy Commissioner

April 24, 2014

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Chamonix Kinimaka, M.D.

REDACTED

Re: License No. 262217

Dear Dr. Kinimaka:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 14-100. This order and any penalty provided therein goes into effect May 1, 2014.

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

Enclosure

cc: Ralph Erbaio, Jr., Esq.
94 Barrett Hill Road
Lake Carmel, NY 10512

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

BPMC No. 14-100

IN THE MATTER OF CHAMONIX KINIMAKA, M.D.	MODIFICATION OF CONSENT ORDER

This matter was brought to the New York State Board for Professional Medical Conduct (BPMC) for decision at the request of Chamonix Kinimaka, M.D., (Licensee), License No. 262217. Licensee was subject to BPMC Order No. 11-211 (Order), effective September 13, 2011. The Order suspended Licensee's license to practice medicine for an indefinite period of no less than six (6) months. 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 she is both fit and competent to practice as a physician.

A meeting of the Committee was held in the above-entitled proceeding on December 10, 2013. Licensee appeared with her attorney, Ralph Erbaio, Esquire, before a Committee of the State Board for Professional Medical Conduct consisting of C. Deborah Cross, M.D., Chair, Linda A. Brady, M.D., and Constance Diamond, D.A. 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 she 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 she 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 her 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 her profile information within six months prior to the expiration date of the Licensee's registration period. Licensee shall submit changes to 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 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 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.

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. However, if Licensee has been compliant with all terms of this Order for a period of eight (8) years, she may submit a written request to the Director of the Office of Professional Medical Conduct for an early termination of probation.

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, including some or all of the terms and conditions described herein, may be tolled, at the discretion of the Director of OPMC, 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 she 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 reasonably impose 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 chemical dependency and mental illness. Licensee shall not self-prescribe any medications.

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

a. The Sobriety 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 with at least three (3) random specimens each month specifically tested for the presence of Fentanyl and at least three (3) random specimens each month specifically tested for the presence of Phentermine.** 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 Sobriety Monitor shall notify OPMC immediately if Licensee refuses such a test.

c. The Sobriety 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 Sobriety 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 Sobriety Monitor **within four (4) hours** of being contacted by the Sobriety 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 sobriety monitoring for a period of 15 days or more, Licensee shall notify her Sobriety 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 she successfully completes a residency training program in a medical specialty of her choosing. However, Licensee will be precluded from the specialties of anesthesiology and surgery. Licensee shall provide a copy of this Order to the Director of any residency training program in which she participates.

5. Upon the completion of the residency training program, Licensee's medical practice shall be limited to no more than fifty (50) hours per week for the duration of the Order.

6. For the duration of the Order, Licensee shall practice medicine only in a setting proposed by Licensee and approved in writing by the Director of OPMC.

7. Licensee shall not apply for a Drug Enforcement Administration Controlled Substance Registration certificate until after she completes her residency.

8. Licensee shall be supervised in her practice by a licensed physician (Practice Supervisor) proposed by Licensee and approved in writing by the Director of OPMC. The Practice Supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC, and shall 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 chemical dependency, mental illness and with 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, perceived 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

9. Licensee shall not treat nor prescribe medications for any friends or family members.

10. After completing her residency, Licensee shall enroll in and successfully complete a minimum of 50 hours of Category 1 continuing medical education (CME) in her practice specialty each year. Licensee shall provide written confirmation to OPMC of her completion of the CME courses.

11. Licensee shall continue in both individual and group therapy with qualified health care professionals (Therapists), proposed by Licensee and approved, in writing, by the Director of OPMC. One Therapist should be for Licensee's history of chemical dependency. The second Therapist should be for general insight-oriented psychodynamic therapy. The Therapists are to be familiar with the Licensee's history of chemical dependency and mental illness, and with the terms of this Order. Licensee will continue in treatment at a frequency determined by the Therapists, under treatment plans approved by the Director of OPMC, for the duration of the Order. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Licensee to Licensee's Therapists. Licensee shall submit the name of a proposed successor within seven (7) days of becoming aware that either of Licensee's approved Therapists are no longer willing or able to serve in their capacity.

a. The Therapists 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 Therapists shall report immediately to OPMC any significant pattern of absences, suspected or actual impairment, failure to comply or discontinuation of recommended treatment, including any prescribed medications, by Licensee.

12. 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: HIPPA, 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.

13. 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/chemical dependency issues 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 she is fit to resume practice. Failure to comply with the treatment recommendations will be considered a violation of this Order.

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

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

16. Licensee shall inform all treating physicians or other health care practitioners of Licensee's history of chemical dependency and mental illness. Licensee shall advise OPMC, within seven (7) days, of any controlled or mood-altering substances dispensed, administered or prescribed to her by any treating physician or other health care practitioner.

17. 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 her practice locations or OPMC offices.

18. 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.

19. 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.

20. Licensee shall conduct herself in all ways in a manner befitting her professional status and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by her profession.

21. 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.

22. Should Licensee practice medicine in another state, she 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.

23. Licensee shall comply with all terms, conditions, restrictions and limitations to which she 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: 4/19/14

REDACTED

C. Deborah Cross, M.D.
Committee Chair
NYS Board for Professional Medical Conduct