

January 9, 2013

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

David Michael Lee, M.D.

REDACTED

Re: License No. 246448

Dear Dr. Lee:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 13-11. This order and any penalty provided therein goes into effect January 16, 2013.

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: Carla Hogan, Esq.  
Tuczinski, Cavalier, Gilchrist & Collura, P.C.  
54 State Street, Suite 803  
Albany, NY 12207

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**IN THE MATTER**  
**OF**  
**DAVID MICHAEL LEE, M.D.**

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**CONSENT**  
**ORDER**

Upon the application of **DAVID MICHAEL LEE, M.D.**, (Respondent), in the attached Consent Agreement, 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 or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 1/8/2013 \_\_\_\_\_

REDACTED \_\_\_\_\_

Arthur S. Hengerer, M.D.  
Chair  
State Board for Professional  
Medical Conduct

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

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IN THE MATTER

CONSENT

OF

AGREEMENT

DAVID MICHAEL LEE, M.D.  
CO-11-02-1070-A

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DAVID MICHAEL LEE, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about October 10, 2007, I was authorized to practice medicine in the State of New York, and issued license number 246448 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 (OPMC) of any change of my address within thirty (30) days, thereof.

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.

I do not contest the two (2) Specifications and agree to the following penalty:

My license shall be suspended for three (3) years (stayed). I currently do not practice medicine in the State of New York. Should I return to the practice of medicine in the State of New York or in any jurisdiction where that practice is predicated upon my New York State medical license, I shall provide ninety (90) days notice in writing to the Director, OPMC. The Director in his/her sole discretion, may impose whatever limitations, or further conditions, he/she deems appropriate.

Prior to returning to practice in New York, I will be required to demonstrate my fitness to practice medicine through a Committee on Professional Conduct, after a proceeding in which I have met a burden of proof and persuasion, as further set forth in attached Exhibit "B." The Committee's exercise of discretion shall not be reviewable by the

Administrative Review Board.

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

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 30 days after the effective date of the Consent Order and will continue so long as Respondent remains a licensee in New York State;

and

That Respondent shall cooperate fully with the OPMC in its administration and enforcement of the Consent Order and in its investigation 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 Agreement. Respondent shall meet with a person designated by the Director, OPMC, as directed. Respondent shall respond promptly and provide OPMC with 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 New York State Education Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and the Consent Order, and/or related Modification Orders, 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 Public 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 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 or email transmission to me or my attorney, whichever is first. This Consent Order, this Consent 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 of Health 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 for Professional Medical Conduct and the Office of Professional Medical Conduct 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, OPMC, and the Chair of the Board each retain complete discretion either to enter into the proposed Consent 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: 12/27/2012

REDACTED

\_\_\_\_\_  
DAVID MICHAEL LEE, M.D.  
Respondent

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

DATE: 12-14-12

REDACTED  
\_\_\_\_\_  
CARLA HOGAN, ESQ.  
Attorney for Respondent

DATE: 1/3/13

REDACTED  
\_\_\_\_\_  
MICHAEL G. BASS  
Assistant Counsel  
Bureau of Professional Medical Conduct

DATE: Jan 7, 2013

REDACTED  
\_\_\_\_\_  
 KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

**EXHIBIT A**

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**IN THE MATTER**  
**OF**  
**DAVID MICHAEL LEE, M.D.**  
**CO-11-02-1070-A**

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**STATEMENT**  
**OF**  
**CHARGES**

**DAVID MICHAEL LEE, M.D.**, Respondent, was authorized to practice medicine in New York state on October 10, 2007, by the issuance of license number 246448 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about April 3, 2012, the Medical Board of California, Department of Consumer Affairs, State of California, (hereinafter "California Board"), by a STIPULATED SETTLEMENT AND ORDER (hereinafter "California Order"), ORDERED that Respondent's Physician and Surgeon's certificate be issued on a probationary basis for seven years, and that Respondent be subjected to conditions, including, *inter alia*, abstention from the use of controlled substances and alcohol, biological fluid testing, community service, ethics courses, psychotherapy practice monitoring, and a solo practice prohibition. In the CULPABILITY section of the California Order, Respondent admitted that at any hearing of this matter, Complainant could prove a *prima facie* case establishing each and every charge and allegation in the Statement of Issues. The Statement of Issues alleged, *inter alia*, that Respondent was untruthful on an application, misused prescription drugs, and suffered from mental conditions which would interfere with his safe practice of medicine.

B. The conduct resulting in the California Board disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law Sec. 6530(2) (fraud) and/or;
2. New York Education Law Sec. 6530(7) (impairment by alcohol, drugs, physical disability, or mental disability), and/or;
3. New York Education Law Sec. 6530(8) (being dependent on narcotics or other drugs).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper 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, in that Petitioner charges:

1. The facts in Paragraphs A and B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and B.

DATED: *Sept. 14*, 2012  
Albany, New York

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

## EXHIBIT "B"

1. The Respondent shall be allowed to practice medicine only after Respondent makes a showing 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 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 both fit and clinically competent for 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 advisability of terminating Respondent's license suspension. The Committee shall be given access to evidence including, but not limited to:
  - a. Any evidence pertaining to Respondent's compliance with the condition 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 sobriety monitor referred to in paragraph 5c.
  - b. The signed acknowledgment and curriculum vitae from the proposed supervising physician referred to in paragraph 5d.
  - c. The signed acknowledgment and curriculum vitae from the proposed health care professional referred to in paragraph 5e.
  - d. Certified true and complete copies of all evaluation and treatment records relating to Respondent's substance abuse/dependence, psychological, psychiatric and/or mental health treatment, 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.

- e. 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 alcohol/drug screening.
- f. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
- g. A current, independent, in-depth chemical dependency and psychiatric evaluation by a board-certified psychiatrist specializing in addiction medicine.
- h. 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 both fit and clinically competent 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 alcohol/drug screening since the date of the original submissions referred to in paragraph 3d.
  - b. Evidence that Respondent has maintained adequate knowledge and competence to practice medicine; 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 both fit and clinically competent for active practice as a physician.**

- 5. If the Chair of the Committee issues an Order finding that Respondent has successfully completed the prescribed course of treatment and 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 five years. The minimum conditions shall include the following:
  - a. Respondent shall be required to comply with the terms of a continuing after-care 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 sobriety will be monitored by a health care professional proposed by Respondent and approved, in writing, by the Director of OPMC ("sobriety monitor"). The sobriety monitor shall not be a personal friend. The sobriety monitor shall be familiar with Respondent's history of chemical dependence and with the terms of probation to be set forth. The sobriety monitor shall acknowledge willingness to comply with the monitoring terms by executing the acknowledgment provided by OPMC.
  - i. Respondent shall remain drug and alcohol free.
  - ii. The sobriety monitor shall see Respondent as designated by the Order finding Respondent both fit and clinically competent to practice medicine.
  - iii. The sobriety monitor shall direct Respondent to submit to unannounced tests of Respondent's blood, breath and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time a test is positive or is refused by Respondent. Respondent shall avoid all substances that may cause positive urine drug screens such as poppy seeds, mouthwash, cough medicine, etc. Any positive result shall be considered a violation of probation.
  - iv. The sobriety monitor shall report to OPMC any non-compliance with the imposed conditions.
  - v. Respondent shall ensure that the sobriety monitor submits quarterly reports to OPMC certifying Respondent's compliance, or detailing Respondent's failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
  
- d. 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 of impairment 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.

- e. 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.
6. The terms set forth in paragraph 5 are the minimum probation terms related to fitness to practice to be imposed on Respondent, 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 to practice medicine, Respondent shall be barred from requesting that a Committee be convened to hear a petition for license suspension termination for 9 months from the date of the denial.
8. In addition to the terms set out in paragraph 5, and any other terms added by the Committee, Respondent shall also be subject to the following standard terms of probation:
  - a. Respondent's conduct shall conform to moral and professional standards of conduct and governing law.
  - b. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204, 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.
  - c. Any civil penalty not paid by Respondent by the prescribed date shall subject Respondent to all legal provisions pertaining to debt collection, including the imposition of interest, late payment charges and collection fees, referral of the debt to the New York State Department of Taxation and Finance for collection, and the non-renewal of permits or licenses. [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].

- d. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
- e. Respondent's professional performance may be reviewed by the Director of 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 OPMC offices.
- f. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- g. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by state rules and regulations regarding controlled substances.
- h. Respondent shall comply with this Consent Order and all its terms, conditions, restrictions, limitations and penalties and shall be responsible for all associated compliance costs. Upon receiving evidence of non-compliance with the Consent Order, or any violation of its terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against Respondent authorized by law.