

NEW YORK
state department of
HEALTH

Public

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

December 31, 2014

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Hector Martinez, M.D.
Southern Tier Anesthesiologists
202 N. Barry Street
Olean, NY 14760

Re: License No. 167814

Dear Dr. Martinez:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 14-328. This order and any penalty provided therein goes into effect January 7, 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,

REDACTED

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

Enclosure

cc: Linda C. Laing, Esq.
Notaro & Laing, P.C.
One Niagara Square
Buffalo, NY 14202

IN THE MATTER
OF
HECTOR MARTINEZ, M.D.

CONSENT
ORDER

Upon the application of (Respondent) **HECTOR MARTINEZ, 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: 12/30/2014

REDACTED

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

**IN THE MATTER
OF
HECTOR MARTINEZ, M.D.**

**CONSENT
AGREEMENT**

HECTOR MARTINEZ, M.D., represents that all of the following statements are true:

That on or about September 5, 1986, I was licensed to practice as a physician in the State of New York, and issued License No. 167814 by the New York State Education Department.

My current address is Southern Tier Anesthesiologists, P.C., 202 North Barry Street, Olean, NY 14760, 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, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I do not contest the Second Specification in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.

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

That Respondent shall not prescribe any medications for family members, professional colleagues or social friends.

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 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 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 12/18/14

REDACTED

HECTOR MARTINEZ, M.D.
RESPONDENT

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

DATE: 12/24/14

REDACTED

LINDA D. LAING, ESQ.
Attorney for Respondent

DATE: 12/30/14

REDACTED

MICHAEL G. BASS
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: 12/30/14

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

**IN THE MATTER
OF
HECTOR MARTINEZ, M.D.**

**STATEMENT
OF
CHARGES**

HECTOR MARTINEZ, M.D., Respondent, was authorized to practice medicine in New York state on or about September 5, 1986, by the issuance of license number 167814 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (patients are identified in the attached appendix), a 61 year old female, at various times from on or about June 30, 2011, to on or about November 20, 2011. Respondent's care and treatment of Patient A failed to meet accepted standards of medical practice in that:

1. Respondent, on or about June 30, 2011, failed to conduct a physical examination of Patient A, and/or failed to document such examination.
2. Respondent, on or about June 30, 2011, prescribed Patient A Alprazolam absent medical justification, and/or failed to document such justification.

B. Respondent provided medical care for Patient B, a 34 year old female, on or about July 13, 2012. Respondent's care and treatment failed to meet accepted standards of medical practice in that:

1. Respondent, on or about July 13, 2012, failed to conduct a physical examination of Patient B, and/or failed to document such examination.
2. Respondent, on or about July 13, 2012, prescribed Patient B Acetaminophen/Codeine absent medical justification, and/or failed to document such justification.

C. Respondent provided medical care for Patient C, a 22 year old female, on or about September 20, 2009. Respondent's care and treatment of Patient C failed to meet the accepted standards of medical practice in that:

1. Respondent, on or about September 20, 2009, failed to conduct a physical examination of Patient C, and/or failed to document such examination.
2. Respondent, on or about September 20, 2009, prescribed Patient C Alprazolam absent medical indication, and/or failed to document such indication.

D. Respondent provided medical care for Patient D, a 46 year old female, on or about October 24, 2008. Respondent's care and treatment of Patient D failed to meet accepted standards of medical practice in that:

1. Respondent, on or about October 24, 2008, failed to conduct a physical examination of Patient D, and/or failed to document such examination.
2. Respondent, on or about October 24, 2008, prescribed Patient D Propoxy absent medical indication, and/or failed to document such indication.

E. Respondent provided medical care for Patient E, a 45 year old female, at various times from on or about September 28, 2011, to on or about January 4, 2012. Respondent's care and treatment of Patient E failed to meet accepted standards of medical practice in that:

1. Respondent, on or about January 3, 2012, failed to take an adequate medical history of Patient E, and/or failed to document such history.
2. Respondent, on or about January 3, 2012, prescribed Patient E Cymbalta absent medical justification, and/or failed to document such justification.

SPECIFICATIONS

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(3) by practicing the profession with negligence on more than one occasion as alleged in the facts of any two or more of the following:

1. The facts in paragraphs A and A.1, A and A.2, B and B.1, B and B.2, C and C.1, C and C.2, D and D.1, D and D.2, E and E.1, and/or E and E.2.

SECOND SPECIFICATION

FAILURE TO MAINTAIN A RECORD

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient as alleged in the facts of any one or more of the following:

2. The facts in paragraphs A and A.1, A and A.2, B and B.1, B and B.2, C and C.1, C and C.2, D and D.1, D and D.2, E and E.1, and/or E and E.2.

DATED: *Dec. 30*, 2014
Albany, New York

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct