

June 4, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Michelle C. Harper, R.P.A.
REDACTED

Re: License No. 011903

Dear Ms. Harper:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 13-162. This order and any penalty provided therein goes into effect June 11, 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: Andrew Feldman, Esq.
Feldman & Kieffer
The Dunn Building
110 Pearl Street, Suite 400
Buffalo, NY 14202

**IN THE MATTER
OF
MICHELLE C. HARPER, RPA**

**CONSENT
ORDER**

Upon the application of (Respondent) Michelle C. Harper, RPA 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: 6/3/2013

REDACTED

ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

**IN THE MATTER
OF
MICHELLE C. HARPER, RPA**

CONSENT
AGREEMENT

Michelle C. Harper, RPA, represents that all of the following statements are true:

That on or about July 6, 2007, I was licensed to practice as a registered physician's assistant in the State of New York, and issued Registration No. 011903 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 one or more 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 plead no contest to the specifications, and agree to the following penalty:

1. I shall complete a five year term of probation in accordance with the terms set forth in Exhibit B hereto.

2. Pursuant to Public Health Law § 230-a(8), I shall complete a course of education in prescribing controlled substances and a course in ethics as set forth in Exhibit B.

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

DATE: 5/28/13

REDACTED

ANDREW FELDMAN, ESQ.
Feldman & Kieffer
Attorneys for Respondent

DATE: 5/29/13

REDACTED

TIMOTHY J. MAHAR
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 6/3/13

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

IN THE MATTER

OF

MICHELLE C. HARPER, RPA

Michelle C. Harper, RPA, the Respondent, was authorized to practice medicine in New York State on or about July 6, 2007, by the issuance of registration number 011903 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent, at various times during the period from August 2011 to May of 2012, used prescription controlled substances in amounts which had not been authorized under an approved therapeutic regimen.

- B. Respondent, during the period from August 2011 to May 2012, wrote prescriptions for controlled substances in the names of three family members who had not been examined by Respondent's supervising physician during that time and whose treating physicians were unaware of the prescriptions Respondent had written for their patients.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION
NARCOTICS DEPENDENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (8) by being dependent on or a habitual user of narcotics or other drugs having similar effects, which drugs were used in amounts not authorized under an approved treatment regimen, as alleged in paragraphs A and/or B.

SECOND SPECIFICATION
NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on than one occasion as alleged in paragraph B.

DATE: May 29, 2013
Albany, New York

REDACTED

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

EXHIBIT "B"

Terms of Probation

- 1) Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
- 2) Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
- 3) 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.
- 4) Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 5) Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
- 6) 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.

- 7) The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 8) 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.
- 9) Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
- 10) Respondent shall enroll in and successfully complete a continuing education program in the area of prescribing controlled substances and a program in ethics. This continuing education program is subject to the Director of OPMC's prior written approval and shall be successfully completed within the first 90 days of the probation period.
- 11) Respondent shall remain free from alcohol and all other mood altering substances other than those prescribed for Respondent's treatment by a licensed health care professional aware of Respondent's history of chemical dependency and mental illness. Respondent shall not self-prescribe any medications.
- 12) Respondent shall remain active in self-help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.
- 13) Respondent shall notify all treating physicians of Licensee's history of substance abuse. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
- 14) Respondent 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: 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.
- 15) At the direction of the Director of OPMC, Respondent shall submit to evaluations by a board-certified psychiatrist, licensed mental health practitioner or other health care professional designated by the Director. Respondent shall provide the evaluator

with copies of all previous treatment records and a copy of this Order. The evaluator shall report to the Director regarding Respondent's condition and fitness or incapacity to practice medicine. Respondent shall comply with all treatment recommendations based upon the evaluation. Failure to comply with such treatment recommendations shall constitute professional misconduct.

16. Within 30 days of the effective date of the Order of Conditions, Respondent shall practice only when monitored by qualified health care professional monitors: a Sobriety Monitor, a Practice Supervisor and a Therapist. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

All monitors shall be proposed by Respondent and approved, in writing, by the Director of OPMC before Respondent may practice after the effective date of this Order. Within 7 days of learning the approved monitor is no longer will or able to serve, Respondent shall submit the name of a proposed successor to the Director of OPMC. Monitors shall not be family members or personal friends or be in professional relationships that would pose a conflict with monitoring responsibilities. All monitors shall execute acknowledgment forms provided by OPMC certifying familiarity with Respondent's history of substance abuse, with this Order and its Conditions, and acknowledging a willingness to comply with the monitor's reporting responsibilities regarding Respondent's compliance with the terms of this Order.

- a. Respondent shall ensure that the monitors are familiar with Respondent's history of substance abuse and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
- b. Respondent shall submit to random, unannounced observed blood, breath and/or urine screens for the presence of drugs and alcohol (hereafter "drug screen") when requested by a monitor. The monitoring shall be on a random, unannounced, directly-observed, 7-day-a-week, 24-hour-a-day basis. Respondent shall report for a drug screen within 4 hours of being contacted by a monitor. Monitors shall report to OPMC immediately if Respondent refuses or delays a test or if a test is positive for alcohol, or any other unauthorized drug or substance. Respondent shall avoid all substances that may cause positive urine drug screens, such as poppy seeds, mouthwash or cough medicine. Any positive test result shall constitute a violation of the Conditions of this Order.
- c. Respondent shall meet regularly with a Sobriety Monitor. During the first 12 months of monitoring, the Sobriety Monitor shall obtain drug screens at a frequency of no less than 6 times per month. If Respondent is compliant throughout the first 12-month period, subsequent drug screens shall be obtained at a frequency to be proposed by the Sobriety Monitor and

approved by OPMC. The Sobriety Monitor shall submit quarterly reports to OPMC certifying Respondent's sobriety or lack of sobriety. These reports are to include forensically valid results of all drug screens performed and an assessment of self-help group (e.g., AA/NA/Caduceus) attendance and 12-step progress.

- d. Respondent shall practice only when supervised in medical practice by a licensed physician (hereafter "Practice Supervisor"). 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 Respondent's medical practice. The Practice Supervisor shall oversee Respondent's compliance with the conditions of practice imposed by the Order and Respondent's prescribing, administering, dispensing, inventorying, wasting and disposal of controlled substances. The Practice Supervisor shall report immediately to OPMC any suspected impairment, inappropriate behavior, questionable medical practice, possible misconduct, or violation by Respondent of any of the terms of this Order. The Practice Supervisor shall submit quarterly reports to OPMC regarding the quality of Respondent's medical practice and prescribing practices, any unexplained absences from work, and certifying Licensee's compliance or detailing Respondent's failure to comply with each probation terms imposed.
 - e. Respondent shall engage and continue in therapy with a treating health care professional (hereafter "Therapist"). Respondent shall cause the Therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Therapist. The Therapist shall report to OPMC immediately if Respondent leaves treatment against medical advice or displays any symptoms of a suspected or actual relapse. The Therapist will provide 30 days written notice to OPMC prior to terminating treatment.
- 17) Respondent shall enroll, or continue enrollment, in the Committee for Physician Health (CPH) and shall engage in a contract with CPH that defines the terms, conditions and duration of Respondent's recovery program. Respondent shall comply with the contract. Respondent shall give written authorization for CPH to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract and with this Order, including full access to all records maintained by CPH with respect to Respondent.
- a. Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's impairment is not substantially alleviated by treatment.

- b. Respondent shall cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.
- 18) Respondent shall comply with all terms, conditions, restrictions, and limitations imposed by this Order and shall bear all related compliance costs. Upon receiving evidence of any violation of this Order, the Director of OPMC and/or the Board may initiate a proceeding against Respondent. Respondent's failure to comply with this Order, if proven, shall constitute professional misconduct as defined by N.Y. Educ. Law, including but not limited to N.Y. Educ. Law § 6530(29), which defines professional misconduct to include "... violating any... condition... imposed on the Respondent pursuant to section two hundred thirty of the public health law."