

Public

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

IN THE MATTER
OF
ROBERT M. WEBB, M.D.

CONSENT
ORDER

BPMC No. 05-274

Upon the application of (Respondent) ROBERT M. WEBB, 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 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: 11-23-2005

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 M. WEBB, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

ROBERT M. WEBB, M.D., representing that all of the following statements are true, deposes and says:

That on or about 1977, I was licensed to practice as a physician in the State of New York, and issued License No. 129744 by the New York State Education Department.

My current address is 2200 Burdett Avenue, Troy, New York 12180, 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 has charged me with one specification of professional misconduct.

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

I admit the First Specification [violation of any term of probation and condition imposed pursuant to Section 230 of the Public Health Law], and the factual allegations cited in support of it, in full satisfaction of the charges against me, and agree to the following penalty:

My license shall be suspended for an indefinite period but no less than twelve months. I shall be subject to a condition that I comply with attached Exhibit "C," "Guidelines For Closing a

Medical Practice Following a Revocation, Surrender or Suspension (Of 6 Months or More) of a Medical License.” Upon compliance with all conditions of this Order, but no sooner than twelve months from the effective date of this order, I may petition the Board for a Modification Order staying the indefinite suspension of my license.

I understand and agree:

That any Modification Order the Board may issue, in the exercise of its reasonable discretion, may include terms of probation, and/or further conditions on my practice.

That the Board will exercise its reasonable discretion upon my petition for a Modification Order 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".

That 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 return any and all official New York State prescriptions to the Bureau of Narcotic Enforcement, and shall surrender Respondent's Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within thirty days of this

Order's effective date. Further, within thirty days of returning these prescriptions and surrendering said registration, Respondent shall provide the Director of OPMC ("Director") with written evidence, satisfactory to the Director, that Respondent has complied with this condition.

That Respondent shall maintain active registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty days after the Consent Order's effective date and will continue so long as Respondent remains licensed 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 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 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 Order shall constitute misconduct as defined by New York State Education Law § 6530(29).

If I am charged with professional misconduct in future, I hereby stipulate and agree that this Application and Order, and/or related Modification Orders shall be admitted into evidence at such proceeding as part of the Department's case-in-chief, at the sole discretion of the Department (Petitioner).

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 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 Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public 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 ask that the Board adopt this Consent Agreement.



ROBERT M. WEBB, M.D.
RESPONDENT

DATE 10/24/05

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

DATE: 11/8/05


PETER J. MILLOCK, ESQ.
Attorney for Respondent

DATE: 11/14/05


MICHAEL A. HISER, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/22/05


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
ROBERT M. WEBB, M.D.

STATEMENT
OF
CHARGES

ROBERT M. WEBB, M.D., the Respondent, was authorized to practice medicine in New York State on or about 1977, by the issuance of license number 129744 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent, by Temporary Surrender effective on or about April 3, 2003, temporarily surrendered his license to practice medicine in the State of New York based on his assertion that he was "at present incapacitated for the active practice of medicine due to substance abuse", but that his incapacity had not resulted in harm to any patient.
- B. By Restoration Order effective on or about April 20, 2004, Respondent's medical license was restored, contingent on Respondent's compliance with a variety of conditions, including 5 year monitoring of his medical practice and his ongoing treatment regimen, and that he "shall remain free from alcohol and all other mood altering substances" other than those prescribed for Respondent's use by a licensed physician aware of his history of substance abuse. Respondent was also prohibited from self-prescribing medications.
- C. On or about October 3, 2005, Respondent engaged in the use of mood altering substances other than those prescribed in accordance with the Restoration Order.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

VIOLATION OF TERM OF PROBATION AND CONDITION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(29) by violating a term of probation and a condition or limitation imposed on the licensee pursuant to Section 230 of the Public Health law, as alleged in the facts of the following:

1. The facts in Paragraphs A, B, and C.

DATE: *Nov.*
 October 14, 2005
 Albany, New York

Peter D. Van Buren
 Peter D. Van Buren
 Deputy Counsel
 Bureau of Professional
 Medical Conduct

EXHIBIT "B"

1. The suspension of Respondent's license shall be terminated only upon 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, which successful compliance or completion must include a determination by said Committee that Respondent is no longer incapacitated for the practice as a physician and **that Respondent is both fit and clinically competent to practice as a physician**. Respondent shall provide to the Office of Professional Medical Conduct (OPMC) a proposed treatment plan, for advice as to whether it is generally appropriate, but the determination of successful compliance with or completion of the course of therapy shall be made solely by the Committee, and shall include, but not be limited to, a determination that Respondent is no longer incapacitated for the active practice as a physician.

2. Upon Respondent's request, but after the passage of the minimum period of suspension, a meeting of a Committee shall be convened for the purpose of hearing and evaluating Respondent's showing referred to in paragraph 1. The Board will make reasonable attempts to convene a Committee not later than 90 days after Respondent's request, which shall not be deemed to have been perfected until receipt, by the Director of the Office of Professional Medical Conduct, (Director) of all that is required to be provided by Respondent pursuant to the Conditions imposed upon Respondent and pursuant to paragraph 3 below. The procedural nature of said proceeding shall be determined by the Board through the discretion of the Director of OPMC upon consultation with Counsel, Bureau of Professional Medical Conduct (Counsel). Proceedings before said Committee shall **not** be in the nature of a hearing pursuant to New York Public Health Law § 230, but shall instead be informal and intended only for the purpose of addressing any and all facts, evidence, information, circumstances, or issues which do or may relate to the advisability of terminating the suspension of Respondent's license. The Committee shall be given access to evidence including, but not limited to:
 - a. Any and all evidence pertaining to Respondent's compliance with the conditions imposed.

- b. Any evidence which the Director or Counsel deems appropriate.
3. At the time that Respondent requests that a meeting of a Committee be scheduled, pursuant to paragraph 2, she 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. These certified records shall be forwarded directly to OPMC from all treatment providers, facilities and evaluators. These records shall reflect any treatment and evaluation provided whether said treatment and evaluation occurred prior to or during the time this suspension is in effect. Such records shall include documentation of 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 aforesaid documents will not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

4. At least 14 days prior to 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 as a physician. Such evidence shall include documentation of continuing medical education and, if so requested by the Director of OPMC, a report of an independent evaluation of Respondent's medical knowledge and competence.

Submission of the aforesaid evidence shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

5. If the Chairperson of the Committee issues an order (Order) finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice medicine, and therefore terminating the suspension of Respondent's license, the Order shall further impose a period of probation, pursuant to New York Public Health Law § 230-a, during which Respondent's practice as a physician shall be subject to conditions imposed. **Respondent's practice shall be subject to such conditions 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 that addresses 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. Said 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. Said monitor shall not be a personal friend. Said monitor shall be familiar with Respondent's history of chemical dependence, with this suspension and with the terms of probation to be set forth. Said sobriety monitor shall acknowledge his/her willingness to comply with the monitoring by executing the acknowledgment provided by OPMC.
 - i. Respondent shall remain drug and alcohol free.
 - ii. Said monitor shall see Respondent at least twice during each month.
 - iii. Said monitor shall direct Respondent to submit to unannounced tests of her blood, breath and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time such a test is positive or is refused by Respondent. Respondent shall avoid all substances which may cause positive urine drug screens such as poppy seeds, mouthwash, cough medicine, etc. Any positive result will be considered a violation of probation.
 - iv. Said monitor shall report to OPMC any non-compliance with the imposed conditions.
 - v. Respondent shall ensure that said monitor submits to OPMC quarterly reports 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.
 - vi. Respondent shall avoid all substances which may cause positive urines such as poppy seeds, mouthwash and cough medication. Any positive test result will be considered a violation of this Order.
- d. Respondent shall be supervised in Respondent's medical practice by a licensed physician, proposed by Respondent and approved in

writing by the Director of OPMC, in accordance with the conditions contained in or annexed to the Order. Said supervising physician shall be familiar with Respondent's history of impairment and with the Order and its conditions. Said supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. Said 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. Said supervising physician shall acknowledge his/her willingness to comply with the supervision by executing the acknowledgment provided by OPMC.

- i. Respondent shall ensure that said supervising physician submits to OPMC quarterly reports regarding the quality of Respondent's medical practice, any unexplained absences from work and certifying her compliance or detailing her failure to comply with each condition imposed.
 - ii. Said 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, 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 said treating health care professional or program submits to OPMC quarterly reports certifying that Respondent is complying with the treatment.
 - ii. Said treating 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. Said treating health care professional shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgment provided by OPMC.

6. The terms set out in paragraph 5 shall be the minimum probation terms, related to Respondent's fitness to practice, to be imposed on her practice upon terminating the suspension of her license, and that other terms may be added by the Committee, and that the costs of complying with all such terms will be Respondent's responsibility. Any failure by Respondent to comply with the conditions imposed upon her practice at the time of suspension termination, may result in disciplinary action being brought against her charging professional misconduct as defined by the New York State Education Law, including but not limited to NY Education Law § 6530(29).
7. Upon any denial of respondent's petition for suspension termination made by the Committee, Respondent shall not again request convening a Committee until a minimum period of nine months has elapsed since such denial.
8. In addition to the terms set out in paragraph 5 and any other terms added by the Committee upon the termination of Respondent's license suspension, she shall also be subject to the following standard terms of probation:
 - a. Respondent shall conduct himself 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 the profession of medicine.
 - b. 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.
 - c. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such 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, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

- d. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- e. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is 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].
- f. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty 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 thirty 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 will 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 are necessary to protect the public health.
- g. 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 and/or hospital charts, interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- h. 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.
- i. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which Respondent is subject pursuant to

the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of non-compliance 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 Respondent as may be authorized pursuant to the law.

EXHIBIT "C"

**GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A
REVOCATION, SURRENDER OR SUSPENSION (of six months or more)
OF A MEDICAL LICENSE**

1. Respondent shall immediately cease the practice of medicine in compliance with the terms of the Consent Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within 15 days of the Consent Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty days of the Consent Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty days of the Consent Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six years after the last date of service, and, for minors, at least six years after the last date of service or three years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A

qualified person shall not be denied access to patient information solely because of inability to pay.

5. Within 15 days of the Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within 15 days of the Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.
7. Within 15 days of the Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.
8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six months or more pursuant to this Order, Respondent shall, within ninety days of the Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety days of the Order's effective date.

10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four years, under § 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under § 230-a of the Public Health Law.