

**NEW YORK**  
state department of  
**HEALTH**

Public

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

Sue Kelly  
Executive Deputy Commissioner

June 21, 2013

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Bruce Saul Kay, M.D.  
120 Eastmoor Boulevard  
Columbus, OH 43209

Re: License No. 136630

Dear Dr. Kay:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 13-192. This order and any penalty provided therein goes into effect June 28, 2013.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: c/o Physician Monitoring Unit, NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719. If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. Our office is unable to store framed licenses.**

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Enclosed for your convenience is an affidavit. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management  
New York State Department of Health  
Corning Tower, Room 2784  
Empire State Plaza  
Albany, New York 12237

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: Mark Uba, Esq.  
5500 Main Street, Suite 204  
Williamsville, NY 14221

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IN THE MATTER  
OF  
BRUCE SAUL KAY, M.D.

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CONSENT  
ORDER

Upon the application of **BRUCE SAUL KAY, M.D.**, (Respondent), in the attached Consent Agreement, that 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.

DATED: 6/21/2013

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

IN THE MATTER

OF

BRUCE SAUL KAY, M.D.  
CO-12-08-4295-A

CONSENT

AGREEMENT

BRUCE SAUL KAY, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about November 3, 1978, I was licensed to practice medicine in the State of New York and issued license number 138630 by the New York State Education Department.

My current address is 120 Eastmoor Boulevard, Columbus, OH 43209, and I will advise the Director (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 four (4) 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 Second Specification in full satisfaction of all Specifications, and agree to the following sanction:

Respondent shall pay a \$10,000.00 fine, to be paid within two hundred and seventy (270) days of the effective date of the Consent Order to the NYS Department of Health, Bureau of Accounts Management, Revenue Unit, Empire State Plaza, Corning Tower, Room 2784, Albany, NY 12237-0016.

My New York license to practice medicine shall be suspended until the July 11, 2012, State Medical Board of Ohio (hereinafter "Ohio Board") Indefinite Suspension (hereinafter "Ohio Suspension") of my Ohio certificate to practice medicine and surgery is lifted. Once the Ohio Suspension is lifted, I shall be placed on probation for a term of three (3) years, in accordance with Exhibit B, attached hereto.

Respondent shall comply fully with the Ohio Board Order dated July 11, 2012, and any extensions or modifications thereof. Respondent shall notify the Director of the Office of Professional Medical Conduct, New York State Department of Health, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204, via certified mail, immediately after the Ohio Suspension is lifted.

Respondent shall provide a written authorization for the Ohio Board to provide The Director of OPMC with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Ohio Order.

Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether Respondent has been in compliance with the Ohio Order during the declaration period specified.

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

That Respondent shall remain in continuous compliance with all requirements of New York Education 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 New York Education 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 remain in continuous compliance with all requirements of New York Public 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 New York Public Health Law § 230, shall constitute professional misconduct as defined in New York Education Law § 6530(21) and New York Education Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in New York Public Health Law § 230-a, including but not limited to: Revocation or Suspension of license, Censure and Reprimand, Probation, Public Service and/or Fines up to \$10,000 per specification of misconduct found.

That Respondent shall cooperate fully with the OPMC in its administration and enforcement of the 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 Agreement. Respondent shall meet with a person designated by the Director, 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 the Consent Order shall constitute misconduct as defined by New York Education Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and the Consent 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 New York 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 the 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 or email transmission to me or my attorney, whichever is first. The 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 New York Public 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, administratively and/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.

AFFIRMED:

DATED: 6 / 10, 2013

REDACTED

BRUCE SAUL KAY, M.D. //  
Respondent

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

DATE: 6/13, 2013

REDACTED

MARK R. UBA, Esq.  
Attorney for Respondent

DATE: 6/13, 2013

REDACTED

MICHAEL G. BASS  
Assistant Counsel  
Bureau of Professional Medical Conduct

DATE: 6/18, 2013

REDACTED

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

**EXHIBIT A**

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER  
OF  
BRUCE SAUL KAY, M.D.  
CO-12-08-4295-A

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STATEMENT  
OF  
CHARGES

BRUCE SAUL KAY, M.D., Respondent, was authorized to practice medicine in New York state on or about November 3, 1978, by the issuance of license number 136630 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about July 11, 2012, the State Medical Board of Ohio (hereinafter "Ohio Board"), by ENTRY OF ORDER, (hereinafter "Ohio Order"), *inter alia*, suspended Respondent's certificate to practice medicine and surgery for an indefinite period of time, but not less than 180 days, and that upon reinstatement or Restoration, Respondent's certificate be subject to probation for a period of at least 3 years. The basis of the Ohio Board's discipline were the findings of a hearing examiner that Respondent had provided large quantities of controlled substances and other abusable drugs to patients without first performing, or documenting that he had performed, and adequate workup that would support the use of such medication, and that Respondent turned a blind eye to obvious signs of patient misbehavior.

B. The conduct resulting in the Ohio disciplinary action 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 Section 6530(3) (negligence on more than one occasion); and/or
2. New York Education Law Section 6530(4) (gross negligence); and/or
3. New York Education Law Section 6530(32) (failure to maintain a record).

C. By a letter dated March 9, 2011, the Ohio Board notified Respondent that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio.

D. On or about February 3, 2012, Respondent prepared and/or submitted to the New York State Education Department, a Registration Renewal Document, wherein he falsely answered "No" to the question "Since your last registration application, are charges pending against you in any jurisdiction for any sort of professional misconduct?"

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law Section 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 Section 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.

**THIRD SPECIFICATION**

Respondent violated New York Education Law Section 6530(3) by practicing the profession fraudulently, in that Petitioner charges:

3. The facts in Paragraphs C and D.

**FOURTH SPECIFICATION**

Respondent violated New York Education Law Section 6530(21) by willfully making or filing a false report required by the education department, in that Petitioner charges:

4. The facts in Paragraphs C and D.

DATED: *Feb. 14*, 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, 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.
- 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 and obligations thereof 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) Within thirty days of the Consent Order's effective date, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
  - a) Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
  - b) Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - c) Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
- 11) Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance

with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

- 12) Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.