These charges are only allegations which may be contested by the licensee in an Administrative hearing.

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

IN THE MATTER OF Don Kerson, M.D.

NOTICE
OF
HEARING

TO: Don Kerson, M.D.
Greenpoint Psychiatric Services
861 Manhattan Ave.
Brooklyn, NY 11221

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on December 11, 2018, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, NY, NY 10007 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses

and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here [redacted]

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center,150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the

Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATE Nov. 8, 2018

[redacted]

Henry Weintraub
Chief Counsel
Bureau of Professional Medical Conduct

New York, NY

Inquiries should be directed to:
Courtney Berry, Associate Counsel

Bureau of Professional Medical Conduct
90 Church Street
4th Floor
New York NY 10007

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

IN THE MATTER

OF

Don Kerson, M.D.

STATEMENT

OF

CHARGES

Don Kerson, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1982, by the issuance of license number 150609 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent, a psychiatrist, treated Patient A from in or about July 2010 through in or about June 2015. Respondent deviated from accepted medical standards in that:

1. Respondent failed to appropriately diagnose, evaluate and treat Patient A.
   a. Respondent failed to order and/or perform adequate testing and/or follow-up.
   b. Respondent inappropriately prescribed controlled substances for Patient A.
   c. Respondent failed to appropriately monitor Patient A's use of stimulants and/or other controlled substances.
2. Respondent failed to maintain an adequate medical record for Patient A.
3. Pursuant to Public Health Law §3343a and 10 NYCRR §80.63, effective August 27, 2013, prior to prior to prescribing or dispensing any Schedule II, III and/or IV controlled substance, every practitioner is obligated to consult the prescription monitoring program registry and review a patient's

controlled substance history and document in the patient's chart either the consultation or the reason such consultation was not performed.

a. From on or about August 27, 2013 through on or about June 2015, Respondent failed to consistently consult the prescription monitoring registry prior to prescribing and/or dispensing Schedule II, III or IV controlled substances to Patient A.

b. Respondent failed to document either the consultation of the Prescription Monitoring Program Registry or the reason for a lack of such consultation.

B. Respondent, a psychiatrist, treated Patient B from on or about December 2010 through in or about June 2015. Respondent deviated from accepted medical standards in that:

1. Respondent failed to appropriately diagnose, evaluate and treat Patient B.

a. Respondent failed to order and/or perform adequate testing and/or follow-up.

b. Respondent inappropriately prescribed controlled substances for Patient B.

c. Respondent failed to appropriately monitor Patient B's use of stimulants and/or other controlled substances.

2. Respondent failed to maintain an adequate medical record for Patient B.
3. Pursuant to Public Health Law §3343a and 10 NYCRR §80.63, effective August 27, 2013, prior to prior to prescribing or dispensing any Schedule II, III and/or IV controlled substance, every practitioner is obligated to consult the prescription monitoring program registry and review a patient's controlled substance history and document in the patient's chart either the consultation or the reason such consultation was not performed.

a. From on or about August 27, 2013 through on or about June 2015, Respondent failed to consistently consult the prescription monitoring registry prior to prescribing and/or dispensing Schedule II, III or IV controlled substances to Patient B.

b. Respondent failed to document either the consultation of the Prescription Monitoring Program Registry or the reason for a lack of such consultation.

C. Respondent, a psychiatrist, treated Patient C from in or about January 2012 through in or about April 2016. Respondent deviated from accepted medical standards in that:

1. Respondent failed to appropriately evaluate, diagnose and treat Patient C.
   a. Respondent failed to order and/or perform adequate testing and/or follow-up.
   b. Respondent inappropriately prescribed controlled substances for Patient C.
   c. Respondent failed to coordinate care with Patient C's other providers.
2. Respondent placed false entries in Patient C's medical record.
   a. Respondent did so knowingly and with intent to deceive.
3. Respondent failed to maintain an adequate medical record for Patient C.
4. Pursuant to Public Health Law §3343a and 10 NYCRR §80.63, effective August 27, 2013, prior to prior to prescribing or dispensing any Schedule II, III and/or IV controlled substance, every practitioner is obligated to consult the prescription monitoring program registry and review a patient's controlled substance history and document in the patient's chart either the consultation or the reason such consultation was not performed.

   a. From on or about August 27, 2013 through on or about June 2015, Respondent failed to consistently consult the prescription monitoring registry prior to prescribing and/or dispensing Schedule II, III or IV controlled substances to Patient C.

b. Respondent failed to document either the consultation of the Prescription Monitoring Program Registry or the reason for a lack of such consultation.

D. Respondent, a psychiatrist, treated Patient D from in or about May 21, 2014 through in or about June 2014. Respondent deviated from accepted standards of care in that:

1. Respondent engaged in inappropriate conversations with Patient D for other than a good faith medical purpose.

2. Respondent touched Patient D for other than a good faith medical purpose.

3. Respondent inappropriately combined Patient D's medical record with that of another patient.

4. Respondent inappropriately issued a prescription in Patient D's name, to another patient.

a. Respondent did so knowingly and with intent to deceive.

E. Respondent, a psychiatrist, treated Patient E in or about June 2014. Respondent deviated from accepted medical standards of care in that:

1. Respondent inappropriately issued a prescription to Patient E in another patient's name.

2. Respondent inappropriately combined Patient E's medical record with that of another patient.

F. Respondent, a psychiatrist, treated Patient F from in or about July 2014 through in or about September 2014. Respondent deviated from accepted medical standards in that:

1. Respondent failed to adequately diagnose, evaluate and treat Patient F.
   a. Respondent failed to order and/or perform adequate testing and/or follow-up.
   b. Respondent inappropriately prescribed controlled substances for Patient F.
   c. Respondent failed to appropriately monitor Patient F's use of controlled substances.
   d. Respondent inappropriately provided controlled substances and/or post-dated prescriptions to Patient F.
2. Pursuant to Public Health Law §3343a and 10 NYCRR §80.63, effective August 27, 2013, prior to prior to prescribing or dispensing any Schedule II, III and/or IV controlled substance, every practitioner is obligated to consult the prescription monitoring program registry and review a patient's controlled substance history and document in the patient's chart either the consultation or the reason such consultation was not performed.
      a. From on or about July 2014 through on or about September 2014, Respondent failed to consistently consult the prescription monitoring registry prior to prescribing and/or dispensing Schedule II, III or IV controlled substances to Patient F.
      b. Respondent failed to document either the consultation of the Prescription Monitoring Program Registry or the reason for a lack of such consultation.
3. Respondent failed to maintain an adequate medical record for Patient F.
4. Respondent engaged in a sexual and/or improper personal relationship with Patient F while treating her.

5. Respondent inappropriately attempted to dissuade Patient E from reporting his improper behavior to physician disciplinary officials.

SPECIFICATION OF CHARGES

FIRST 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 more than one occasion as alleged in the facts of:

1. Paragraph A and its subparagraphs; Paragraph B and its subparagraphs; Paragraph C and its subparagraphs; Paragraph D and its subparagraphs; Paragraph E and its subparagraphs; and/or Paragraph F and its subparagraphs.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of:

2. Paragraph A and its subparagraphs; Paragraph B and its subparagraphs; Paragraph C and its subparagraphs; Paragraph D and its subparagraphs;

Paragraph E and its subparagraphs; and/or Paragraph F and its subparagraphs.

THIRD THROUGH SEVENTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

3. Paragraph A and its subparagraphs.
4. Paragraph B and its subparagraphs.
5. Paragraph C and its subparagraphs.
6. Paragraph D and its subparagraphs.
7. Paragraph F and its subparagraphs.

EIGHT AND NINTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

8. Paragraphs D, D1 and/or D2.
9. Paragraphs F, F4 and/or F5.

TENTH THROUGH TWELFTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

10. Paragraphs C, C2 and C2a.
11. Paragraphs D, D4 and D4a.
12. Paragraphs E and E1.

THIRTEENTH SPECIFICATION

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

13. Paragraphs C and C2.

FOURTEENTH AND FIFTEENTH SPECIFICATIONS

PATIENT HARASSMENT, ABUSE AND/OR INTIMIDATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(31) by willfully harassing, abusing or intimidating a patient, as alleged in the facts of:

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(31) by willfully harassing, abusing or intimidating a patient, as alleged in the facts of:

14. Paragraph D, D1 and/or D2.

15. Paragraph F, F4 and/or F5.

SIXTEENTH AND SEVENTEENTH SPECIFICATIONS

SEXUAL CONTACT BEYWEEN PSYCHIATRIST AND PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(44) by engaging in physical contact of a sexual nature with a patient, as alleged in the facts of:

16. Paragraph D and D2.

17. Paragraph F and F4.

EIGHTEENTH THROUGH TWENTY-FIRST SPECIFICATIONS

FAILURE TO COMPLY WITH STATE LAW AND STATE REGULATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16) by willfully and/or grossly negligently failing to comply with substantial provisions of state law and/or regulation governing the practice of medicine, namely Article 33 of the Public Health Law and 10 NYCRR §80.63 (the Prescription Monitoring Program registry), as alleged in the facts of:

18. Paragraph A, A3, A3a and/or A3b.

19. Paragraph B, B3, B3a and/or B3b.

20. Paragraph C, C4, C4a and/or C4b.

21. Paragraph F, F2, F2a and/or F2b.

TWENTY-SECOND THROUGH TWENTY-SEVENTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. 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:

22. Paragraph A, A2 and A3b.

23. Paragraph B, B2 and B3b.

24. Paragraph C, C2, C3 and C4b.

25. Paragraph D, D3 and D4.

26. Paragraph E and E2

27. Paragraph F, F2b and F3.

DATE: November 8, 2018
New York, New York

[redacted]

Henry Weintraub
Chief Counsel
Bureau of Professional Medical Conduct