NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 13, 2019

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Don Kerson, M.D.
Greenpoint Psychiatric Services
861 Manhattan Ave., Suite 3
Brooklyn, New York 11221

Re: License No. 150609

Dear Dr. Kerson:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 19-028. This order and any penalty provided therein goes into effect February 20, 2019.

You are required to deliver your license and registration within 5 days of the effective date of the surrender provision 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. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719, telephone # (518) 402-0846.

Sincerely,

[redacted]

Robert A. Catalano, M.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Jordan Fensterman, Esq.
Abrams, Fensterman, Fensterman,
Eisman, Formato, Ferrara & Wolf, LLP.
3 Dakota Drive, Suite 300
Lake Success, New York 11042

Don Kerson, M.D.
[redacted]

Enclosure

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

BPMC No. 19-028

IN THE MATTER
OF
Don Kerson, M.D.

SURRENDER
ORDER

Upon the application of (Respondent) Don Kerson, M.D. to surrender his or her license as a physician in the State of New York, which is made a part of this Surrender Order, it is

ORDERED, that the Surrender, and its terms, are adopted and it is further

ORDERED, that effective close of business on May 1, 2019, Respondent's name be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Surrender Order, either by first class mail to Respondent at the address in the attached Surrender of License application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney,

Whichever is first,

SO ORDERED.

DATE: 02/12/2019

[redacted]

ARTHUR S. HENGERER, 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 Don Kerson, M.D.	SURRENDER OF LICENSE AND ORDER

Don Kerson, M.D., represents that all of the following statements are true:

That on or about July 1, 1982, I was licensed to practice as a physician in the State of New York, and issued License No. 150609 by the New York State Education Department.

My current address is [redacted].

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", which is attached to and part of this Surrender of License.

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York on the grounds that I assert that I cannot successfully defend against at least one act of misconduct alleged, in full satisfaction of the charges against me.

I ask the Board to accept my Surrender of License, effective close of business May 1, 2019, and I agree to be bound by all of the terms set forth in attached Exhibit "B".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged;

this application 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 accepts my Surrender of License, the Chair of the Board shall issue a Surrender 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 Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender Order, this agreement, and all attached exhibits shall be public documents, with only patient identities or other confidential information, if any, redacted. As public documents, they may be posted on the Department's website(s). OPMC shall report this action to the National Practitioner Data Bank, the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I ask the Board to accept this Surrender of License, which I submit of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, 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 Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and 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 2/8/19

[redacted]

Don Kerson, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Surrender of License and Order and to its proposed penalty, terms and conditions.

DATE: 2/9/2019

[redacted]
JORDAN FENSTERMAN, ESQ.
Attorney for Respondent

DATE: 2/11/19

[redacted]
COURTNEY BERRY
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 2/12/19

[redacted]
KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

EXHIBIT "B"

Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall, upon the effective date of license surrender, immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.

2. Within 5 days of the Surrender's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.

3. By close of business March 1, 2019, Licensee shall notify all patients of the cessation of Licensee's medical practice, effective May 1, 2019. By close of business March 8, 2019, Licensee shall provide OPMC with written documentation that all patients have been notified of the cessation of Licensee's medical practice. By close of business April 16, 2019, Licensee shall refer all patients to another licensed practicing physician for continued care, as appropriate. By close of business April 19, 2019, Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee is ceasing medical practice, effective May 1, 2019. By close of business April 26, 2019, Licensee shall provide OPMC with written documentation that such health plans and hospitals have been notified of the cessation of Licensee's medical practice.

4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Surrender's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact person who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 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 include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's 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 forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be

provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within 15 days of the Surrender's effective date, advise the DEA, in writing, of the licensure action and shall surrender Licensee's DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.

6. Immediately upon the Surrender's effective date, the Licensee shall no longer issue prescriptions in any form, including orally, on paper, by telephone, by fax machine, electronically, or by any other means. Within 15 days of the Surrender's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications. As part of the agreement to no longer prescribe electronically, Licensee shall, within 15 days of the Surrender's effective date, entirely relinquish the ability to electronically prescribe, including but not limited to surrendering Licensee's hard token, disabling Licensee's biometric reader, deactivating Licensee's electronic prescribing account, and uninstalling Licensee's electronic prescribing software, as approved by the Director of BNE. By close of business May 23, 2019, Licensee shall furnish proof of same to the satisfaction of the Director of BNE.

7. Within 15 days of the Surrender's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.

8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Surrender's effective date.

9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the

sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Surrender's effective date.

10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment for up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to $10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.