July 8, 2016

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

David Johnston, D.O.

Re: License No. 208902

Dear Dr. Johnston:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 16-242. This order and any penalty provided therein goes into effect July 15, 2016.

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)402-0855.

Sincerely,

Henry Spector, M.D.
Acting Executive Secretary
Board for Professional Medical Conduct

cc: Stephen V. Manning, Esq.
Spears Manning, LLC
2425 Post Road, Suite 203
Southport, Connecticut 06890

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

IN THE MATTER OF
DAVID L. JOHNSTON, D.O.

BPMC No. 16-242
SURRENDER ORDER

Upon the application of (Respondent) DAVID L. JOHNSTON, D.O. 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 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.

7/8/2016

DATE: __________

ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct
DAVID L. JOHNSTON, D.O., represents that all of the following statements are true.

That on or about November 12, 1997, I was licensed to practice as a physician in the State of New York, and issued License No. 208902 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 admit the first specification, in full satisfaction of the charges against me.

I ask the Board to accept my Surrender of License, 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, 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 the
discretion.

DATE 6/1/16

DAVID L. JOHNSTON, D.O.
RESPONDENT
The undersigned agree to Respondent's attached Surrender of License and Order and to its proposed penalty, terms and conditions.

DATE: 6/24/2016

STEPHEN V. MANNING, ESQ.
Attorney for Respondent

DATE: 6-27-16

LEE A. DAVIS
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 6/28/16

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
DAVID L. JOHNSTON, D.O.

STATEMENT OF CHARGES

DAVID L. JOHNSTON, D.O., the Respondent, was authorized to practice medicine in New York State on November 12, 1997 by the issuance of license number 208902 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 16, 2015 in the United States District Court, District of Connecticut, Respondent was convicted of healthcare fraud upon his plea of guilty, in violation of 18 United States Code §1347, a felony. Respondent was sentenced to three (3) months incarceration, followed by a three (3) year period of supervised release, 150 hours of community service, restitution of $172,950.00 and a special assessment of $100.00.

B. On or about March 15, 2016, the State of Connecticut Medical Examining Board accepted the Consent Order signed by Respondent on March 4, 2016, whereby Respondent did not contest the Connecticut Medical Examining Board imposing disciplinary action on the basis of Respondent having engaged in illegal conduct in the practice of medicine, and imposed the penalty of reprimand, a $3,000.00 fine and placed Respondent on probation for a period of three (3) years.

1. The conduct resulting in the Connecticut Consent Order constitute misconduct under the laws of New York State, pursuant to the following section of New York state law:
   a. New York State Education Law §6530 (9) (a) (ii) (being convicted of a federal crime).
SPECIFICATIONS OF MISCONDUCT
FIRST SPECIFICATION
CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraph A.

SECOND SPECIFICATION
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having other disciplinary action taken, where the conduct resulting in the revocation, disciplinary action involving the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(9) (a) (ii)) as alleged in the facts of the following:


DATE: April 25, 2016
Albany, New York

Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct