



**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

February 3, 2025

CERTIFIED MAIL-RECEIPT REQUESTED

Brian D. Babiak, M.D.

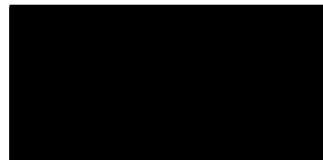

Re: License No. 248298

Dear Dr. Babiak:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 25-020. This Order of Conditions pursuant to Public Health Law Section 230 is effective February 10, 2025.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York, 12204, telephone # 518-402-0846.

Sincerely,



David Besser, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Gregory J. Radomisli, Esq.
Martin, Clearwater & Bell, LLP.
220 East 42nd Street
New York, New York 10017

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

BPMC No. 25-020

IN THE MATTER
OF
BRIAN D. BABIAK, M.D.


ORDER
OF CONDITIONS
PURSUANT TO
N.Y. PUB. HEALTH
LAW § 230

Upon the application of Brian D. Babiak, M.D. (Licensee) in the attached Stipulation and Application for an Order of Conditions Pursuant to N.Y. Pub. Health Law § 230 (Application), which is made a part of this Order of Conditions Pursuant to N.Y. Pub. Health Law § 230 (Order), it is agreed that:

- the Application and its terms are adopted; and
- this Order shall be effective upon issuance by the Board, either by mailing of a copy of this Order by first class mail to Licensee at the address in the attached Application or by certified mail to Licensee's attorney, or upon facsimile transmission to Licensee or Licensee's attorney, whichever is first.

SO ORDERED.

DATE: 1/30/2025


THOMAS T. LEE, M.D.
Chair
State Board for Professional Medical Conduct

**IN THE MATTER
OF
BRIAN D. BABIAK, M.D.**

**APPLICATION FOR
ORDER OF
CONDITIONS
PURSUANT TO
N.Y. PUB. HEALTH
LAW § 230**

Brian D. Babiak, M.D., represents that all of the following statements are true:

That on or about April 16, 2008, I was licensed to practice as a physician in the State of New York and issued License No. 248298 by the New York State Education Department.

My current address is [REDACTED] and I will advise the Director of the Office of Professional Medical Conduct of any change of address. I am affiliated with the following hospitals and/or facilities:

None

I understand that the New York State Board for Professional Medical Conduct ("the Board") has investigated the issues set forth in attached Exhibit "A".

I request that the Board and the Director of the Office of Professional Medical Conduct ("the Director"), in reliance upon the results of the investigation to date and upon my representation that I have practiced medicine without incident for at least a year before this Application, conclude the investigation of these issues, provided I successfully and without incident comply with the Conditions set forth below. In consideration of the Board

and the Director granting this Application, and upon the Board's election not to bring disciplinary charges against me, I agree that the Board and the Director shall issue an Order of Conditions Pursuant to N.Y. Pub. Health Law § 230.

I agree that the Order shall impose the following conditions:

That Licensee shall remain in continuous compliance with all requirements of N.Y. Educ. 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. Licensee shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Order's effective date and shall continue at all times until the conclusion of the period of Practice Conditions, regardless of tolling; and

That Licensee shall remain in continuous compliance with all requirements of N.Y. Pub. 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 Licensee's profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to Licensee's

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 Licensee remains a licensee in New York State.

Licensee's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law §230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

That Licensee shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and ensure that this information is kept current: a full description of Licensee'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. Licensee shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's

effective date and shall continue at all times until Licensee receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Licensee has fully complied with and satisfied the requirements of the Order, regardless of tolling; and

That Licensee shall cooperate fully with the Office of Professional Medical Conduct ("OPMC") in its administration and enforcement of this Order and in its investigation of Licensee. Licensee shall respond in a timely manner to all OPMC requests for written periodic verification of compliance with the terms of this Order, meet in person with the Director's designee, and respond promptly and provide all documents and information within Licensee's control to OPMC, as directed. This Condition shall take effect upon the Order's effective date and shall continue while Licensee possesses a license in New York; and

That for a period of three years from the Order's effective date, subject to the tolling provisions set forth below, Licensee shall be subject to additional conditions set forth as "Practice Conditions" enumerated in Exhibit "B", which is attached to and a part of this agreement.

I stipulate that my failure to comply with the conditions imposed by this order, if proven and found at a hearing pursuant to N. Y. Pub. Health Law § 230(10), shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(29). I agree that if I am charged with professional misconduct in future, this Application and Order shall be admitted into evidence in that proceeding.

I understand that nothing in this Application shall be construed as an admission by me of any act of alleged misconduct or as a finding of misconduct as to those issues referred to in Exhibit "A". I deny any acts of misconduct and reserve my right to assert all defenses I may have in any later or other proceeding.

I understand and agree that my failure to comply with, successfully complete, or satisfy any of the material conditions of this Order, and/or any unsatisfactory report by the practice reviewer, shall vest the Director with the authority, in the exercise of reasonable discretion, to vacate this agreement and shall permit the Director to pursue further investigation and/or prosecution of misconduct charges against me as to the issues set forth in Exhibit "A" to the full extent authorized by the Public Health Law and the Education Law.

I understand that an Order issued upon this Application does not bar prosecution for professional misconduct based upon allegations of violations of N.Y. Educ. Law § 6530 unrelated to the issues set forth in Exhibit "A", whether those alleged violations occurred before or after this Application. The Director may, at such time, also direct counsel to prepare charges that include allegations as to the issues set forth in Exhibit "A".

I agree that, if the Board grants this Application, the Chair of the Board shall issue an Order of Conditions in accordance with its terms. I further agree that the Department of Health shall notify the National Practitioner Data Bank and the Federation of State Medical Boards of this Order of Conditions pursuant to N.Y. Pub. Health Law § 230 and that the change in my licensure status is not disciplinary in nature. This Order of Conditions [with

the exception of Exhibit "A," which shall remain a part of the investigative files of the Office of Professional Medical Conduct within the meaning of N.Y. Pub. Health Law § 230(10)(a)(v)] shall be posted on the Department of Health website(s).

I make this Application 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 Application, I waive my right to contest the Order for which I apply, whether administratively or judicially, I agree to be bound by the Order, and I ask that the Board grant this Application.

I understand and agree that the attorney for the Department of Health, 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 1/23/2025


BRIAN D. BABIAK, M.D.
LICENSEE

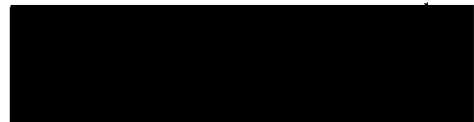
The undersigned agree to Licensee's attached Order of Conditions and to its proposed terms and conditions.

DATE: 1/24/25



GREGORY J. RADOMISLI, ESQ.
Attorney for Licensee

DATE: Jan. 24, 2025



NATHANIAL WHITE
Associate Counsel
Bureau of Professional Medical Conduct

DATE: January 29, 2025



SHELLY WANG BANDAGO
Director
Office of Professional Medical Conduct

EXHIBIT "B"

PRACTICE CONDITIONS

- 1) Licensee's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Licensee as defined in N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of this Order and may subject Licensee to an action pursuant to N.Y. Pub. Health Law § 230.
- 2) Licensee shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Licensee shall ensure education, training and oversight of all office personnel involved in medical care with respect to these practices.
- 3) Licensee shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients.
- 4) The Director may review Licensee'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 or periodic visits with Licensee and staff at practice locations or OPMC offices.
- 5) Licensee shall provide access for DOH personnel to Licensee's office(s) to verify Licensee's compliance with this Order. This access shall include, but not be limited to, on-site inspections, observation and interviews.
- 6) No more than 30 days after the Order's effective date, Licensee shall practice medicine only when subject to review by a licensed physician, board-certified in an appropriate specialty, ("practice reviewer") proposed by Licensee and subject to the

Director of OPMC's written approval. No more than 30 days after learning that the approved practice reviewer is no longer willing or able to serve or no more than 30 days after having been notified by the Director that the practice reviewer has been discharged for cause, which shall include but not be limited to the inadequacy of the practice reviewer's reports and/or performance, Licensee shall have an approved successor in place, subject to the Director's written approval. Upon approval, the new practice reviewer shall perform the duties described in Paragraphs (a) and (c) below. Regardless of the reason necessitating a replacement, if the Director does not approve Licensee's proposed new practice reviewer, Licensee shall immediately cease the practice of medicine, unless notified by the Director, in writing, of an extension, which may be granted at the Director's discretion. In that event, Licensee shall propose another practice reviewer, which the Director has 30 days to approve or disapprove until a practice reviewer is accepted. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

- a) Licensee shall make available to the practice reviewer all records or access to the practice requested by the reviewer, including on-site observation. The practice reviewer shall visit Licensee's medical practice at every location on a random unannounced basis at least monthly and shall examine a selection of records (no fewer than twenty) maintained by Licensee, including patient records, prescribing information and office records, to determine whether the Licensee's medical practice is conducted in accordance with generally accepted standards of

professional medical care. The practice reviewer shall report to OPMC within 24 hours of any perceived deviation by Licensee from accepted standards of medical care or any refusal by Licensee to cooperate with the review.

- b) Licensee shall be solely responsible for all expenses associated with the review of Licensee's practice, including fees, if any, to the reviewing physician.
- c) Licensee shall cause the practice reviewer to report quarterly, in writing, to the Director.

- 7) Licensee shall enroll in and successfully complete continuing education as directed by the Office of Professional Medical Conduct, subject to the Director of OPMC's prior written approval.
- 8) The period of Practice Conditions shall toll when Licensee is not engaged in active medical practice in New York State for 30 consecutive days or more. Licensee shall notify the Director, in writing, if Licensee is not currently engaged in or intends to leave active medical practice in New York State for 30 consecutive days or more and Licensee shall then notify the Director again at least 14 days before returning to active medical practice in New York State. Upon Licensee's return to active medical practice in New York State, the period of Practice Conditions shall resume and Licensee shall fulfill any unfulfilled 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.

- 9) Licensee shall comply with this Order, and all its terms and Conditions, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or violation of these terms, the Director and/or the Board may initiate a proceeding against Licensee under N.Y. Pub. Health Law § 230.

REVIEW OF PRESCRIBING PRACTICES

- 10) Licensee shall comply with all requirements of Article 33 of the Public Health Law and of New York State Department of Health regulations, including but not limited to all requirements related to consultation of the IStop / Prescription Monitoring Program (PMP) Registry when writing prescriptions for Schedule II, III, and/or IV controlled substances, pursuant to Public Health Law Section 3343-a and 10 NYCRR 80.63. Licensee shall meet as requested with OPMC to provide proof of compliance.
- 11) Licensee shall maintain, in a format that is acceptable to OPMC, a log of all ordering, prescribing, administering and/or dispensing of all controlled substances.
- a) This log shall include the following information: the drug, the dose, the patient, the diagnosis, the date that the drug was prescribed, and such other information related to ordering, prescribing, administering and/or dispensing as may be requested by OPMC. The log shall also include all information related to compliance with IStop /PMP Registry consultation requirements, as set forth in paragraph ten (10) above, including a notation of all IStop / PMP Registry consultations performed, including the

date and time performed, and the information contained in the registry upon each consultation. The log entry shall not, by itself, satisfy Licensee's obligation to document consultation with the IStop / PMP Registry in a patient's medical chart.

- b) This log shall be subject to review by Licensee's Practice Reviewer and Licensee shall make this log, and the records of any patient referenced in this log, immediately available to OPMC, upon demand.
- c) Licensee shall cause the Practice Reviewer to examine this log, and include, as part of the Practice Reviewer's review of the medical records of patients treated by Licensee, an examination of at least 10 medical records per month obtained through examination of the log entries.