



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
*Commissioner
NYS Department of Health*

Dennis P. Whalen
*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair

Denise M. Bolan, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

April 8, 2002

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mark H. Novak, R.P.A.
4688 Fairbanks Drive
Syracuse, New York 13216

RE: License No. 003852

Dear Mr. Novak:

Enclosed please find Order #BPMC 02-107 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect April 8, 2002.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

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

IN THE MATTER
OF
MARK H. NOVAK, R.P.A.

CONSENT
AGREEMENT
AND
ORDER

BPMC No. 02-107

Mark H. Novak, R.P.A., representing all statements herein made to be true, says:

That on or about September 22, 1989, I was licensed to practice as a Registered Physician Assistant in the State of New York, having been issued License No. 003852, by the New York State Education Department. I am currently registered to practice that Profession.

My current address is 4688 Fairbanks Drive, Syracuse, New York 13215. I will advise the Director of the Office of Professional Medical Conduct ("OPMC") of any change of my address(es).

I understand that the New York State Board for Professional Medical Conduct ("Board") has charged me with 3 specifications of professional misconduct.

A copy of the Statement of Charges is attached as Exhibit "A".

I admit guilt to the first three specifications of professional misconduct, in full satisfaction of the charges against me, and I agree to the following penalty:

My license shall be suspended for an indefinite period
but no less than twelve months. Upon compliance with

all conditions of this Order, but no sooner than twelve months from the effective date of this order, I may petition the Board for a Modification Order staying the indefinite suspension of my license.

I understand and agree:

That any Modification Order the Board may issue, in the exercise of its reasonable discretion, may include terms of probation, and/or further conditions on my practice.

That the Board will exercise its reasonable discretion upon my petition for a Modification Order through a Committee on Professional Conduct, after a proceeding in which I have met a burden of proof and persuasion as further set forth in attached Exhibit "B".

That the Committee's exercise of discretion shall not be reviewable by the Administrative Review Board.

I further agree that the Consent Order for which I apply shall impose the following conditions:

That, I shall return any and all official New York State prescriptions to the Bureau of Controlled Substances, and I shall surrender my Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within thirty days of the effective date of this Order. Further,

within thirty days of returning said prescriptions and surrendering said registration, I shall provide the Director of OPMC ("Director") with written evidence, satisfactory to the Director, that I have so complied with this condition.

That, except during periods of actual suspension, I shall maintain active registration of my license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while I possess my license; and

That I shall fully cooperate in every respect with OPMC in its administration and enforcement of this Order and in its investigation of me. I shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of my compliance with the terms of this Order. I shall meet with a person designated by the Director, as directed. I shall respond promptly and provide any and all documents and information within my control, upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while I possess my license.

I stipulate and agree that my failure to comply with any of the terms and conditions set forth in this Application and Exhibit "B" shall constitute misconduct

as defined by New York State Education Law §6530(29).

If I am charged with professional misconduct in the future, I hereby stipulate and agree to the admission into evidence at such proceeding, during the Department's case-in-chief, of this Application and Order, and/or related Modification Orders at the sole discretion of the Department (Petitioner).

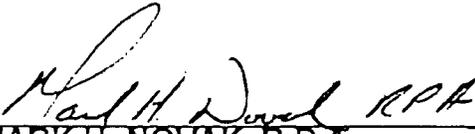
I hereby make this Application to the Board and request that it be granted.

I understand that if this Application is not granted by the Board, this Application shall be of no effect, shall not bind me in any way, shall not be construed to be an admission of any act of alleged misconduct, shall not be used against me, shall be kept in strict confidence, and shall not be used as evidence during the pendency of any professional misconduct disciplinary proceeding; likewise, the Board's denial shall be made without prejudice to the Department's initiation or continuance of any related disciplinary proceeding and/or the Board's final determination of such matter, pursuant to the Public Health Law.

I agree that, if the Board grants my Application, the Chairperson of the Board shall issue an Order in accordance with the terms and conditions set forth in this Application. I agree that such Order shall be effective upon issuance by the Board, which may be accomplished by mailing a copy of the Consent Order to me, by first class mail at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I make this Application of my own free will and accord and not under

duress, compulsion or restraint of any kind. In consideration of the value to me of the Board's acceptance of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent 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.


MARK H. NOVAK, R.P.A.
RESPONDENT

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 3/21/02


ANTHONY M. BENIGNO
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 4/03/02

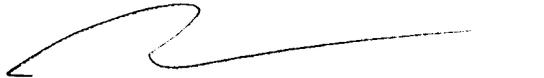

DENNIS J. GRAZIANO
Director
Office of Professional
Medical Conduct

EXHIBIT "B"

1. Respondent's indefinite license suspension shall be modified, and the active suspension of his license terminated, only upon a showing by Respondent to the satisfaction of a Committee on Professional Conduct of the State Board for Professional Medical Conduct (henceforth "Committee"), and upon the Committee's determination, that: Respondent has successfully complied with or completed a course of therapy and ongoing evaluation; Respondent is no longer incapacitated for the practice of the Profession; and Respondent is both fit and clinically competent to practice the Profession.

2. Upon Respondent's written request, a Committee shall meet to hear and evaluate Respondent's showing, as referred to in paragraph 1 above, in support of a Modification Order. The Board will make reasonable attempts to convene a Committee within 90 days after Respondent's request. That request shall not be perfected until the Director of the Office of Professional Medical Conduct receives all the documents Respondent is required to provide, as set forth in paragraph 3 below. The procedural nature of this proceeding shall be determined by the State Board for Professional Medical Conduct, within the discretion of the Director of the Office of Professional Medical Conduct upon consultation with Counsel, Bureau of Professional Medical Conduct.

Proceedings before said Committee shall *not* be in the nature of a *hearing* pursuant to New York Public Health Law §230, but shall instead be informal and intended only to address any and all facts, evidence, information, circumstances, or issues that relate to the advisability of terminating the suspension of Respondent's license. The Committee shall be given access to evidence including but not limited to:

- a. Any and all evidence of Respondent's compliance with the Conditions imposed.
- b. Any evidence that the Director of the Office of Professional Medical Conduct or Counsel, Bureau of Professional Medical Conduct, deems appropriate.

3. At the time that Respondent requests that a Committee meeting be scheduled pursuant to paragraph 2, he shall provide the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299, with the following:

- a. The signed acknowledgment from the supervising physician referred to in paragraph 5e.
- b. The signed acknowledgment from the health care professional referred to in paragraph 5f.
- c. The signed acknowledgment from the monitor referred to in paragraph 5b.
- d. Certified true and complete copies of records of all evaluation and treatment relating to Respondent's impairment, whether that evaluation and treatment occurred prior to or during the time this suspension is in effect. These records shall include documentation of the results of all tests conducted to evaluate Respondent's fitness and his clinical competence to practice the Profession. Such records shall include, but not be limited to, documentation of his participation in the program(s) of the Committee for Physicians' Health of the New York State Medical Society, or other equivalent program(s).
- e. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
- f. A current in-depth chemical dependency evaluation by a health care professional in a licensed facility and an independent current psychiatric evaluation by a board certified psychiatrist.
- g. Respondent's attendance at, participation in, and cooperation with an interview conducted by personnel of OPMC, upon the request of the Director.
- h. At the direction of the Director, a report of a complete clinical competency assessment performed by a program for such assessment, such program to be proposed by Respondent and subject to the prior written approval of the Director of OPMC.

Provision of the aforesaid documents will not alone constitute a showing that Respondent is no longer incapacitated for active practice of the Profession.

4. At least fourteen days prior to the scheduled date of the proceeding referred to in paragraph 2, Respondent shall provide OPMC with the following:

- a. Certified true and complete copies of records of any and all treatment in a residential rehabilitation or day-treatment program or intensive treatment in an out-patient service and any other psychiatric, psychological, and/or mental health treatment, evaluation, and/or testing, whether in an out-patient, in-patient, office, or consultation setting.
- b. Evidence of compliance with the terms of a continuing after-care out-patient treatment plan that addresses the major problems associated with Respondent's illness.
- c. Evidence that Respondent has maintained adequate knowledge and competence to practice the Profession. Such evidence shall include documentation of continuing medical education and, if so requested by the Director of OPMC, a report of an independent evaluation of Respondent's medical knowledge and competence.

Submission of the aforesaid evidence shall not, alone, constitute a showing that Respondent is no longer incapacitated for the active practice of the Profession.

5. If the Chairperson of the Committee issues an order (Order) finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice the Profession, therefore staying the suspension of Respondent's license, the Order shall further impose a period of probation, pursuant to New York Public Health Law §230-a, during which Respondent's practice of the Profession be subject to conditions imposed. Respondent's practice shall be subject to such conditions for a period of no less than five years. The minimum conditions shall include:

- a. Respondent shall remain drug and alcohol free.
- b. Respondent's sobriety will be monitored by a health care professional, proposed by Respondent and approved in writing by the Director of OPMC, in accordance with the conditions imposed by the Order. Said monitor shall acknowledge his/her willingness to comply with the

monitoring by executing the acknowledgment provided by OPMC, and referred to in paragraph 3c.

- i. Said monitor shall be familiar with Respondent's history of impairment, with this Consent Agreement and Order, and with the conditions of practice imposed by the Order. Said monitor shall not be Respondent's treating physician.
 - ii. Said monitor shall see Respondent at least twice during a quarter.
 - iii. Said monitor shall direct Respondent to submit to unannounced tests of my blood, breath, and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time such a test is refused by me or is positive.
 - iv. Said monitor shall report to OPMC any noncompliance with the imposed conditions.
 - v. Said monitor shall not be a personal friend of Respondent's.
 - vi. Said monitor shall submit to OPMC quarterly reports either certifying Respondent's compliance, or detailing Respondent's failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
- c. Respondent shall be required to comply with the terms of a continuing after-care treatment plan that addresses the major problems associated with his illness.
- d. At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board certified psychiatrist or other licensed mental health practitioner designated by the Director. Said practitioner shall report to the Director regarding Respondent's condition and his fitness or incapacity to

practice the Profession.

- e. Respondent shall be supervised in Respondent's practice by a licensed physician, proposed by Respondent and approved in writing by the Director of OPMC, in accordance with the conditions contained in or annexed to the Order. Said supervising physician shall be familiar with Respondent's history of substance abuse and with the Order and its conditions. Said supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. Said supervising physician shall be in a position regularly to observe and assess Respondent's practice. Said supervising physician shall acknowledge his/her willingness to comply with the supervision by executing the acknowledgment provided by OPMC.
 - i. Said supervising physician shall submit to OPMC quarterly reports regarding the quality of Respondent's practice, any unexplained absences from work and certifying his compliance or detailing his failure to comply with each condition imposed.
 - ii. Said supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.

- f. Respondent shall continue in treatment with a health care professional, proposed by him and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
 - i. Respondent's treating health care professional or program shall submit to OPMC quarterly reports certifying that Respondent is complying with the treatment.
 - ii. Said treating health care professional shall report to OPMC immediately if Respondent is noncompliant with his treatment plan or if he

demonstrates any significant pattern of absences.

- iii. Said treating health care professional shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgment provided by OPMC.

6. The terms set out in paragraph 5 shall be the minimum probation terms, related to Respondent's fitness to practice, to be imposed on his practice upon restoration of his license, and that other terms may be added by the Committee at the time of license restoration, and that the costs of complying with all such terms will be Respondent's responsibility. Any failure by Respondent to comply with the conditions imposed upon his practice at the time of license restoration, may result in disciplinary action being brought against him charging professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law Section 6530(29). That section defines professional misconduct to include "violating any... condition... imposed on the licensee pursuant to section two hundred thirty of the public health law."

7. Upon any denial of license restoration made by the Committee, Respondent shall not again request convening of a Committee until a minimum period of nine months has elapsed since such denial.

8. In addition to the terms set out in paragraph 5 and any other terms imposed by the Committee upon restoration of Respondent's license, he shall also be subject to the following standard terms of probation:

- a. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).

- b. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
- c. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- d. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is 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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
- e. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
- f. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited

to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

- g. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
- h. Respondent shall enroll in and complete a continuing education program in the area of _____ to be equivalent to at least _____ credit hours of Continuing Medical Education, over and above the recommended minimum standards set by the Respondent's specialty accrediting body. The continuing education program shall include a minimum of _____ credit hours in the area of _____. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the period of probation or as otherwise specified in the Order.
- i. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

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

IN THE MATTER
OF
MARK H. NOVAK, R.P.A.

CONSENT
ORDER

Upon the proposed agreement of Mark H. Novak, R.P.A. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 4/4/02


WILLIAM P. DILLON, 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
MARK H. NOVAK, R.P.A.

STATEMENT
OF
CHARGES

Mark H. Novak, R.P.A., the Respondent, was authorized to practice as a Registered Physician Assistant in New York State on or about September 22, 1989, by the issuance of license number 003852 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 2, 2000, the New York State Board for Professional Medical Conduct issued Order No. 00-168, attached hereto and made a part hereof as Exhibit 1, wherein MARK H. NOVAK, R.P.A., among other things, agreed to be placed on probation for a period of five years.
- B. Term 6 of probation required that he remained drug/alcohol free.
- C. Respondent drank 4 or 5 vodka tonics on or about July 15, 2001.
- D. Respondent tested positive for alcohol in his urine drug screens of July 16, 2001, September 23, 2001 and October 10, 2001.
- E. Term 18 of probation required that Respondent comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health-care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
- F. On August 22, 2001 the Respondent was informed that Tully Hill was approved to conduct an independent chemical dependency evaluation and he was directed to appear without delay for the evaluation. Respondent failed to appear at Tully Hill for the scheduled independent chemical dependency evaluation.

EXHIBIT A

SPECIFICATION OF CHARGES
FIRST THROUGH THIRD SPECIFICATIONS
HAVING VIOLATED A CONDITION IMPOSED BY PHL SECTION 230

Respondent is charged with professional misconduct under N.Y. Education Law section 6530(29) by reason of his having violated a term or probation or a condition imposed upon him pursuant to Section 230 of the Public Health Law, by BPMC Order #00-168, in that Petitioner charges:

1. The facts in paragraphs A, B and C.
2. The facts in paragraphs A, B and D.
3. The facts in paragraphs A, E and F.

DATED: *March 21*, 2002
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct



New York State Board for Professional Medical Conduct
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D., M.P.H.
Commissioner
NYS Department of Health
Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health
Anne F. Salla, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair

Denise M. Bolan, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

June 2, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

RECEIVED
Physician Monitoring

JUN 02 2000

Mark Novak, R.P.A.
4688 Fairbank Drive
Syracuse, New York 13215

Office of Professional
Medical Conduct

RE: License No. 003852

Dear Mr. Novak:

Enclosed please find Order #BPMC 00-168 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect June 2, 2000.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Catherine A. Gale, Esq.
Gale and Dancks, LLC
7136 E. Genesee Street
P.O. Box 97
Fayetteville New York 13066-0097

Valarie B. Donovan, Esq.

Exhibit 1

IN THE MATTER
OF
MARK H. NOVAK, R.P.A.

CONSENT
AGREEMENT
AND
ORDER

BPMC No. 00-168

MARK H. NOVAK, R.P.A., (Respondent) says:

That on or about September 22, 1989, I was licensed to practice as a Registered Physician Assistant in the State of New York, having been issued License No. 003852 by the New York State Education Department.

My current address is 4688 Fairbank Drive, Syracuse, New York 13215, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address. *M.H.N.*

I understand that the New York State Board for Professional Medical Conduct has charged me with two specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I do not contest the Third Specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

Five year suspension of my registration, the entirety of which shall be stayed conditioned on my full compliance with the terms of probation attached as exhibit B, for a period of five years. *M.H.N.*

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his license; and M.H.N.

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his license. M.H.N.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 2000).

I agree that in the event I am charged with professional misconduct in the

future, this agreement and order shall be admitted into evidence in that proceeding.

M.H.N

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

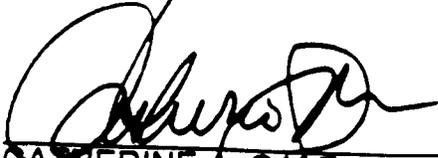
AFFIRMED:

DATED 5/19/2000

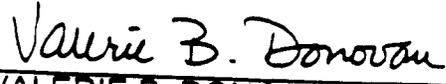

MARK H. NOVAK, R.P.A.
Respondent

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

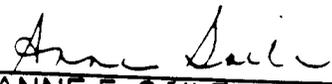
DATE: 5/19/00


CATHERINE A. GALE
Attorney for Respondent

DATE: 5/23/00


VALERIE B. DONOVAN
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: May 25 2000


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

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

IN THE MATTER : STATEMENT
OF : OF
MARK H. NOVAK, R.P.A. : CHARGES

MARK H. NOVAK, R.P.A., the Respondent, was authorized to practice as a Registered Physician Assistant in New York State on September 22, 1989, by the issuance of license number 003852 by the New York State Education Department. Respondent is currently registered with the New York State Education Department. His current address is 4688 Fairbank Drive, Syracuse, New York 13215.

FACTUAL ALLEGATIONS

- A. During the period from on or about April, 1999, through on or about July, 1999, Respondent's work supervisor and co-workers questioned Respondent's use of alcohol during work hours.
- B. On or about July 15, 1999, Respondent was observed imbibing an alcoholic beverage while on duty at the health center at which he was employed.
- C. Respondent was evaluated by a certified Alcohol Screening Clinic in September, 1999 and was diagnosed as suffering from alcohol abuse.

Exhibit A

SPECIFICATIONS OF MISCONDUCT

FIRST THROUGH THIRD SPECIFICATIONS

HABITUAL ALCOHOL ABUSE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law § 6530(8), for being an habitual abuser of alcohol, in that Petitioner charges:

1. The facts in Paragraph A.
2. The facts in Paragraph B.
3. The facts in Paragraph C.

DATED: *May 28*, 2000
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action. *MHP*
3. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice as a Registered Physician Assistant in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave active practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State. *MHP*
4. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices. *MHP*
5. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances. *MHP*
6. Respondent shall remain drug/alcohol free. *MHP*
7. Respondent shall remain active in a self help group such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus. *MHP*
8. Respondent shall notify all treating physicians of his history of alcohol dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians. *MHP*
9. Respondent shall practice only when monitored by qualified health care professionals ("sobriety monitor", "practice supervisor" and "therapist") proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities. *MHP*
10. Respondent shall ensure that the monitors are familiar with Respondent's alcohol dependency and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. *MHP*

MHP

- Respondent shall cause the monitors to submit required reports on a timely basis.
11. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance. *MHN*
 12. Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include: a) forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than six per month for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC; and b) an assessment of self-help group attendance (e.g., AA/NA/Caduceus, etc.), 12 step progress, etc. *MHN*
 13. Respondent shall practice as a Registered Physician Assistant only when supervised in his practice. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. Respondent shall not practice as a Registered Physician Assistant until a practice supervisor has been approved. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC. *MHN*
 14. Respondent shall cause the practice supervisor to review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposal of controlled substances. *MHN*
 15. Respondent shall cause the practice supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practices, and compliance or failure to comply with any term of probation. *MHN*
 16. Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines is necessary. *MHN*
 17. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse. *MHN*
 18. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC. *MHN*
 19. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any

such other proceeding against Respondent as may be authorized pursuant to the law.

M.H.D.

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

IN THE MATTER
OF
MARK H. NOVAK, R.P.A.

CONSENT
ORDER

Upon the proposed agreement of Mark H. Novak, R.P.A. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 5/30/00


WILLIAM P. DILLON, M.D.,
Chair
State Board for Professional
Medical Conduct