STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H.,Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

December 8, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Christopher Calapai, M.D.
1900 Hempstead Turnpike
East Meadow , New York 11554

Re: License # 172127

Dear Dr. Calapai:

Enclosed you will find a copy of your **Non-disciplinary Order of Conditions** pursuant to Public Health Law Section 230. The order is effective December 15, 2004 .

Sincerely,

Dennis J. Graziano
Director
Office of Professional Medical Conduct

cc: Alan Lambert, Esq.
McAloon and Friedman, P.C.
123 William Street
New York, NY 10038

Enclosure

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

IN THE MATTER OF CHRISTOPHER L. CALAPAI, D.O.	NONDISCIPLINARY ORDER OF CONDITIONS PURSUANT TO §230 OF THE PUBLIC HEALTH LAW

Upon the proposed application of CHRISTOPHER L. CALAPAI, D.O. (Licensee) in the attached Stipulation and Application for a Nondisciplinary Order of Conditions Pursuant to §230 of the Public Health Law (Application), which is made a part of this Nondisciplinary Order of Conditions Pursuant to §230 of the Public Health Law (Order), it is agreed to and

ORDERED, that the Application, and its terms, are adopted and

SO ORDERED, and it is further

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

- by mailing of a copy of this Order, either 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.

DATED: 12/6/2004

KENDRICK A. SEARS, 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 CHRISTOPHER L. CALAPAI, D.O.	STIPULATION AND APPLICATION FOR A NONDISCIPLINARY ORDER OF CONDITIONS PURSUANT TO §230 OF THE PUBLIC HEALTH LAW

CHRISTOPHER L. CALAPAI, D.O., representing that all of the following statements are true, deposes and says:

That on or about September 2, 1987, I was licensed to practice as a physician in the State of New York, and issued License No. 172127 by the New York State Education Department.

My current residence address is set forth in attached Exhibit "A." My current practice address is: 1900 Hempstead Turnpike, East Meadow, N.Y. 11554. I am not currently affiliated with any hospitals or other facilities. I will notify the Director of the Office of Professional Medical Conduct ("the Director") of any change in my residence, employment, or medical practice addresses or hospital affiliations.

I understand that the New York State Board for Professional Medical Conduct has investigated allegations of professional misconduct with respect to my care and recordkeeping of the patients identified in attached Exhibit "B".

I ask that the State Board for Professional Medical Conduct ("the Board") and the Director, in reliance upon the results of the investigation to date, conclude the investigation of these allegations, 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 State Board's election not to bring disciplinary charges against me, I agree that the State Board for Professional Medical Conduct and the Director of the Office of Professional Medical Conduct, shall issue a *Nondisciplinary* Order of Conditions Pursuant to New York Public Health Law §230. This Order shall set the following *Conditions* upon my practice for a five year period, subject to the tolling provision set forth below and unless otherwise specified:

- Licensee 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. Licensee acknowledges that if 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 this Order and an action may be taken against Licensee 's license pursuant to New York State Public Health Law §230(10). Licensee shall be entitled to a full hearing on any charges of misconduct arising out of conduct, whether occurring before or after the effective date of the Order, and whether related or unrelated to the terms of the Conditions set forth in this Order.

- Licensee shall provide written notice of the following information 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: a full description of Licensee's employment and practice, professional and residential addresses and telephone numbers within or outside 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.

- 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 Licensee's compliance with the terms of this Order. Licensee shall meet with a person designated by the Director of OPMC, as directed. Licensee shall respond promptly and provide all documents and information within Licensee's control, upon the direction of OPMC. Licensee shall provide access for DOH personnel to Licensee's practice location(s) to verify Licensee's compliance with this Order. This access shall include, but not be limited to, on-site inspections, observation and interviews. This condition shall take effect upon the effective date of the Consent Order and will continue while Licensee possesses a license.

- Licensee shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of every patient.

- Licensee'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, and interviews with or periodic visits with Licensee and his staff at practice locations or at OPMC offices.

With regard to each patient:

1. Licensee shall communicate fully to the patient the extent to which Licensee is serving as a specialist or consultant rather than as the physician with primary care responsibility for that patient's medical condition(s). Licensee shall document this communication fully in the patient's record.

2. Licensee shall refer the patient to appropriate primary care physicians, specialists, or consultants for further evaluation and/or treatment where medically warranted and beyond the scope of Licensee's role with regard to the patient. Licensee shall note all referrals in the patient's medical record. Licensee shall provide the physician receiving the referral with all medically relevant information known to Licensee that is related to the purpose of the consultation; this information shall include, but not be limited to, all non-standard formulary treatment modalities in use, including the medically relevant components of supplements. If the patient refuses the referral after being fully advised of the reason for it, Licensee shall document the Licensee's advice and the patient's refusal.

3. Licensee shall obtain written informed consent specifically addressing those treatment modalities to be used by Licensee as set forth in Exhibit "C", as well as the potential financial ramifications for any patient relying on third party payor(s). The language of the consent forms shall be proposed by Licensee and pre-approved in writing by the Director of OPMC. The approval process by the Director shall be for the purpose of verifying adequate patient informed consent and the Director's approval shall not be unreasonably withheld. The patient record shall include all written informed consent forms duly obtained and full documentation of all discussions with the patient concerning the nature and scope of Licensee's evaluation and treatment, and of the patient's need to pursue primary medical care elsewhere, if indicated.

a. The time frame for drafting, review and approval of consent forms shall be 90 days from the effective date of this Order. Both parties shall proceed in good faith to ensure compliance with the 90 day time frame; however, provided the Director is satisfied that the Licensee is proceeding in good faith, the Director shall have discretion to extend the 90 time frame, if the Director deems necessary. Licensee shall have 45 days after the effective date of this Order within which to submit proposed consent forms for approval to the Director of OPMC. The Director shall timely approve Licensee's proposed consent forms and/or advise Licensee of the reason they have not been approved so that Licensee can timely revise and resubmit the proposed consent forms.

b. From time to time, it may be necessary for the Licensee to propose revisions to consent forms that have been approved by the Director or to propose new consent forms for approval by the Director. After Licensee proposes such a revision or new consent form, the Director shall timely approve Licensee's proposed consent forms and/or advise Licensee of the reason they have not been approved so that Licensee can timely revise and resubmit the proposed consent forms. The time frame for the Director's review and approval of such revised or new consent forms shall be 45 days. The Director shall proceed in good faith to ensure compliance with that time frame; however, the Director shall have discretion to extend the 45 day time frame, if the Director deems necessary.

4. Licensee shall document in the patient record all histories obtained and physical examinations performed on the patient by Licensee and Licensee's staff.

5. Licensee shall attempt to get the patient's written consent to obtain the patient's medical records from prior or concurrently treating physicians or facilities, and to enable Licensee to communicate with those physicians or facilities, as necessary. Licensee shall maintain these medical records, and/or documentation related to requests for these records, in the patient medical record. Licensee shall document appropriately his review of any records received from other treating physicians or facilities. Alternatively,

if the patient refuses to grant written consent after being fully advised of the reason for it, Licensee shall document Licensee's advice and the patient's refusal.

6. Licensee shall note indication for all diagnostic tests ordered, and shall perform and note appropriate follow-up to obtain and address the results of those tests.

7. Licensee shall be solely responsible for all costs of his compliance with this Order.

The five year period of Conditions shall toll when Licensee is not engaged in the active practice of medicine in New York State for thirty (30) consecutive days or more. Licensee shall notify the Director of OPMC, in writing, if Licensee is not currently engaged in the active practice of medicine in New York State or intends to leave active medical practice in New York for thirty (30) consecutive days or more. Licensee shall then notify the Director again before resuming active practice. Upon Licensee's return to active practice in New York State, **the period of Conditions** shall resume and any terms that were not fulfilled shall be fulfilled.

I stipulate that my failure to comply with these conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

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

I understand that if the Board does not adopt this Application, the Application shall be of no effect, shall not bind me in any way, shall not be construed as 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 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 hereby deny any acts of misconduct and reserve my right to assert any and all defenses on my behalf in any later or other proceeding.

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

I understand that an Order issued upon this Application does not bar prosecution for professional misconduct based upon allegations of violations of Educ. Law Sec.6530 unrelated to the issues set forth in Exhibit "B," whether those alleged violations occurred before or after the date of this Application.

I agree that if the Board grants this Application, an Order of the Chairperson of the Board shall issue in accordance with its terms. I understand that this Nondisciplinary Order shall be disclosed to the Federation of State Medical Boards and on the DOH website.

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, I hereby 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.

11/18/04

CHRISTOPHER L. CALAPAI, D.O.
Licensee

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

IN THE MATTER OF CHRISTOPHER L. CALAPAI, D.O.	STIPULATION AND APPLICATION FOR A NONDISCIPLINARY ORDER OF CONDITIONS PURSUANT TO §230 OF THE PUBLIC HEALTH LAW

The undersigned agree to the attached Application of the Licensee and to the issuance of the proposed Order of Conditions Pursuant to §230 of the Public Health Law.

DATE: 11/12/04

ALAN LAMBERT, ESQ.
Attorney for Licensee

DATE: November 19, 2004

MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: December 2, 2004

DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct