



New York State Board for Professional Medical Conduct

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

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NYS Department of Health*

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*Executive Deputy Commissioner
NYS Department of Health*

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Office of Professional Medical Conduct

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Vice Chair

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

June 11, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Thomas Jan, D.O.
1847 Harte Street
Baldwin, NY 11510

RE: License No. 204322

Dear Dr. Jan:

Enclosed please find Order #BPMC 02-190 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect June 11, 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.

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1258
Empire State Plaza
Albany, New York 12237

Sincerely,

A handwritten signature in black ink, appearing to read "Ansel R. Marks". The signature is stylized and cursive.

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

Enclosure

cc: Mitchell J. Birzon, Esq.
Birzon, Quinn, Strang and Huber, Esqs.
222 East Main Street
Smithtown, NY 11787

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

**IN THE MATTER
OF
THOMAS JAN, D.O.**

**CONSENT
AGREEMENT
AND
ORDER**

BPMC No. 02-190

Thomas Jan, D.O., representing that all of the following statements are true, deposes and says:

On or about August 19, 1996, I was licensed to practice as a physician in the State of New York, having been duly issued License No. 204322 by the New York State Education Department.

My current address is 1847 Harte Street, Baldwin, NY 11510. I will advise the Director of the Office of Professional Medical Conduct ("OPMC") of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with 1,288 specifications of professional misconduct.

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

I admit the Three Hundred Thirty-Fourth through Six Hundred Thirty-Seventh Specifications of the Statement of Charges in full satisfaction of the charges against me.

I agree to the following penalty:

1. My license to practice medicine shall be limited and restricted permanently to prohibit me from simultaneously establishing, incorporating, organizing, acquiring, owning, or being a shareholder, director, officer or partner of, more than one entity practicing medicine, including, but not limited to, the following types of entities: physician's office, sole proprietorship practicing medicine, professional service corporation practicing medicine, foreign professional service corporation practicing medicine, professional limited liability corporation practicing medicine, foreign professional limited liability corporation practicing medicine, registered limited liability partnership practicing medicine, foreign registered limited liability partnership practicing medicine, limited partnership practicing medicine, foreign limited partnership practicing medicine, partnership practicing medicine, independent practice association, not-for-profit university faculty practice corporation, or "hospital" (including, a "diagnostic center," "treatment center," or "rehabilitation center") as defined in Section 2801(1) of the Public Health Law.
2. Such single entity referred to above shall not simultaneously have more than two practice locations excluding hospital affiliations.
3. I hereby warrant that the entities set forth in Exhibit "B" to this Consent Agreement and Order are the only entities practicing medicine, as referred to in paragraph 1 above, that I have ever established, incorporated, organized, acquired, owned, or of which I have ever been a shareholder, director, officer or partner.
4. I also hereby warrant that, as of the effective date of this Consent Agreement and Order, I will have either dissolved, transferred, lawfully withdrawn from, or consented to the revocation of, all of

the entities set forth in Exhibit "B," although I may elect to retain my interest in any one of these entities pursuant to the provisions of paragraph 1 herein. Within 15 days of the effective date of this Consent Agreement and Order, I shall notify the Director of OPMC in writing as to my status with respect to each of the entities set forth in Exhibit "B."

5. I shall be fined \$20,000.00, payable in 48 equal monthly installments, with the first installment to be paid on or before the last day of the month during which this Consent Agreement and Order becomes effective and the remaining installments to be paid thereafter on or before the last day of each succeeding month. I shall submit the payments to the Bureau of Accounts Management, New York State Department of Health, Empire State Plaza, Corning Tower, Room 1245, Albany, NY 12237.
6. I shall be on probation for 5 years pursuant to the terms set forth in the Terms of Probation attached hereto, made a part hereof, and marked as Exhibit "C."
7. For a period of 3 years, I shall practice medicine only under the supervision of a practice monitor, as is set forth in detail in paragraph 8 of the Terms of Probation (Exhibit "C").
8. For a period of 5 years, I shall practice medicine only under the supervision of a sobriety monitor, as is set forth in detail in paragraph 9 of the Terms of Probation (Exhibit "C").
9. I shall participate in a continuing education program, as is set forth in detail in paragraph 10 of the Terms of Probation (Exhibit "C").

I shall maintain active registration of my license with the New York State

Education Department Division of Professional Licensing Services (except during periods of actual suspension), and I shall pay all registration fees. This condition shall take effect thirty days after the effective date of this Consent Agreement and Order and will continue as long as I remain licensed in New York State.

I shall cooperate fully with OPMC in its administration and enforcement of this Consent Agreement and Order and in its investigations of matters concerning me. I shall respond in a timely manner to all OPMC requests for written periodic verification of my compliance with this Order. I shall meet with a person designated by the Director of OPMC, as directed, to discuss my compliance with the terms of this Consent Agreement and Order. In connection with my compliance with the terms of this Consent Agreement and Order, I shall respond promptly and provide all documents and information within my control, as directed. This condition shall take effect upon the effective date of this Consent Agreement and Order and will continue as long as I remain licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Agreement and Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in the future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

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

I understand that if the Board does not adopt this Consent Agreement and Order: none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement and Order shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be

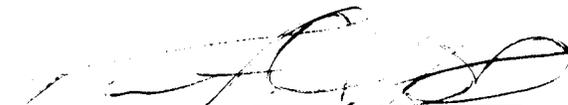
without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board were to adopt this Consent Agreement and Order, an Order of the Chair of the Board shall be issued in accordance with the terms of this Consent Agreement and Order. I agree that such Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Agreement and Order by first class mail to me at the address set forth in this Consent Agreement and Order, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first.

I am making 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 adoption of this Consent Agreement and Order 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 Consent Agreement and Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Agreement and Order, and I ask that the Board adopt this Consent Agreement and Order.

DATED

3/28/07


THOMAS JAN, D.O.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and Order, and to its proposed penalty, terms and conditions.

DATED:

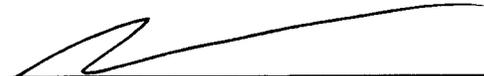
3/28/07


MITCHELL J. BIRZON, ESQ.
Attorney for Respondent
Birzon, Quinn, Strang & Huber, Esqs.
222 East Main Street
Smithtown, NY 11787

DATED: 4/1/02


RICHARD J. ZAHNLEUTER
Associate Counsel
Bureau of Professional
Medical Conduct

DATED: 5/30/02


DENNIS J. GRAZIANO
Director
Office of Professional
Medical Conduct

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

IN THE MATTER
OF
THOMAS JAN, D.O.

CONSENT
ORDER

Upon the Application of Thomas Jan, D.O.(Respondent) for a Consent Order, which Application is made a part hereof, it is agreed to and

ORDERED, that this Consent Agreement and Order, 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 Consent Agreement and Order, either by first class mail to Respondent at the address in the attached Consent Agreement and Order, or by certified mail to Respondent's attorney, or
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 6/8/02

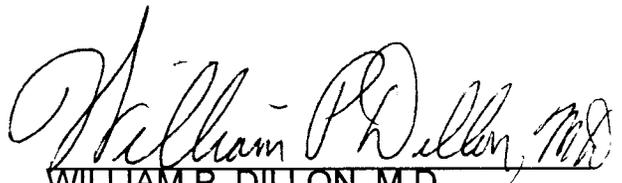

WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

EXHIBIT "A"

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

**IN THE MATTER
OF
THOMAS JAN, D.O.**

STATEMENT
OF
CHARGES

THOMAS JAN, D.O., the Respondent, was authorized to practice medicine in New York State on August 19, 1996, by the issuance of license number 204322 by the New York State Education Department. Dr. Jan's current address, upon information and belief, is 1847 Harte Street, Baldwin, NY 11510.

THOMAS JAN, D.O., is subject to the jurisdiction of the State Board for Professional Medical Conduct, pursuant to the prehearing and hearing procedures of Title II-A of Article 2 of the New York Public Health Law.

ALLEGATIONS

- A. On or about July 1, 1997, Dr. Jan entered into a management services agreement with a corporation named Medicare, Inc., and a layperson, LP#1¹.
- B. Under this July 1, 1997 agreement, Dr. Jan delegated to Medicare, Inc., and LP#1 the responsibility to handle "all billing and collection on all Medical, Physical Therapy, Chiropractic, Physiotherapy, Massage Therapy, Modalities, Pain Management, Psychological and Bio-feedback, Exercise Physiology, X-ray and

¹To preserve privacy throughout this document, laypersons (LP # __) are referred to by numerical designation, and patients are referred to by letter designation (Patient __). An Appendix of Names is attached hereto for appropriate recipients.

all Diagnostic or Testing procedures," pursuant to paragraph First of the July 1, 1997 agreement.

- C. In exchange for such billing services, Dr. Jan agreed to pay Medicare, Inc., and LP#1 25% of the "revenue collected" in connection with Dr. Jan's medical practice, pursuant to paragraph Second of the July 1, 1997 agreement.
- D. In addition, under the July 1, 1997 agreement, Dr. Jan accepted responsibility for the hiring, training, performance, and termination of "all personnel pertaining to matters Medical," pursuant to paragraph Fourth of the July 1, 1997 agreement.
- E. On July 7, 1997, Dr. Jan applied to the State of New York Workers' Compensation Board for authorization to render medical care to persons suffering work-related injury or illness, expressly agreeing in the application "to abide by the provisions of Section 13 through 13-j of the Workers' Compensation Law." Effective September 25, 1997, the State of New York Workers' Compensation Board authorized Dr. Jan to render medical care to persons suffering work-related injury or illness.
- F. The letter by which the State of New York Workers' Compensation Board notified Dr. Jan that his application for authorization had been granted advised him as follows: "Under New York law, a worker is permitted 'free choice' of a doctor to render necessary treatment, provided the health provider has been duly authorized for the kind of treatment which the worker requires. Authorized health providers are subject to the provisions of the Workers' Compensation Law and the Rules and Procedures of the Workers' Compensation Board and the Chair with regard to the treatment of compensation claimants and the

filing of required reports. It is important that you understand fully the obligations you assume in accepting authorization to render treatment under the Workers' Compensation Law."

- G. Section 13-b(1) of the Workers' Compensation Law provides, "[T]he chairman may authorize physicians licensed to practice medicine in the state of New York to render medical care under this chapter ... No person shall render medical care ... without such authorization"
- H. Section 13-b(1)(d) of the Workers' Compensation Law also provides that a duly licensed physical therapist may render care to a patient upon the referral of an authorized physician, and the physician and physical therapist must keep records of the patient's condition and progress, together with records of instruction for treatment.
- I. Beginning in or about September 1997, Dr. Jan began exercising the privileges associated with his Workers' Compensation Board Authorization No. (204322-2) by signing and submitting Workers' Compensation Board "Attending Doctor's Report and Carrier/Employer Billing Forms," which are known as "C-4" billing forms.
- J. By signing and submitting the C-4 billing forms, Dr. Jan expressly represented pursuant to instructions #3 and #8 that he was "the attending doctor" for each patient, expressly acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and expressly "affirmed under penalty of perjury" that all of his entries on the C-4 billing forms were correct.
- K. Beginning in or about September 1997, Dr. Jan signed and

submitted C-4 billing forms: (a) for medical care for patients for whom he was not the attending doctor and for whom the true attending doctor, MD#1, was not authorized by the Workers' Compensation Board; and/or (b) for physical therapy rendered by persons in his office at 2844 Route 112, Suites 5 and 6, Medford, NY, even though Dr. Jan was not an authorized physician on dates of services prior to September 25, 1997 marked by an asterisk, and even though the persons who provided the physical therapy were not duly licensed to provide physical therapy. Specific recitations of such C-4 billing forms regarding Patients A, B, C, D, E, F, G, H, I, and J are set forth in Appendix A.

L. In this same general time frame, regarding patients who had been involved in motor vehicle accidents, Dr. Jan signed and submitted "Health Insurance Claim Forms," which are known as "HCFA-1500" billing forms, for physical therapy rendered by persons in his office at 2844 Route 112, Suites 5 and 6, Medford, NY, even though the persons who provided the physical therapy were not duly licensed to provide physical therapy. Specific recitations of such HCFA-1500 billing forms regarding Patients K, L, M, N, O, and P are set forth in Appendix B.

M. Dr. Jan provided care to Patient A between approximately September 1997 and May 1998. Dr. Jan's care of Patient A did not meet acceptable standards of care in that:

1. Dr. Jan failed to conduct an appropriate EMG study.
2. Dr. Jan failed to communicate appropriately with the referring or concurrent treating physicians.
3. Dr. Jan failed to ensure that physical therapy provided in his office was provided by duly licensed persons.

4. Dr. Jan failed to ensure that documentation of physical therapy services provided in his office was appropriate in terms of development of a treatment plan, reassessment and renewal of the treatment plan, description of services rendered, and signatures of persons providing the services.
 5. Dr. Jan failed to define the level of work that Patient A could do and the level of disability that Patient A had in connection with his March 26, 1998 complaint of a sore knee.
- N. Dr. Jan provided care to Patient B between approximately August 1997 and February 1998. Dr. Jan's care of Patient B did not meet acceptable standards of care in that:
1. Dr. Jan failed to conduct an appropriate EMG study.
 2. Dr. Jan failed to communicate appropriately with the referring or concurrent treating physicians or chiropractors.
 3. Dr. Jan failed to ensure that physical therapy services provided in his office were provided by duly licensed persons.
 4. Dr. Jan failed to ensure that documentation of physical therapy services provided in his office was appropriate in terms of development of a treatment plan, reassessment and renewal of the treatment plan, description of services rendered, and signatures of persons providing the services.
- O. Dr. Jan provided care to Patient C between approximately August 1997 and February 1998. Dr. Jan's care of Patient C did

not meet acceptable standards of care in that:

1. Dr. Jan failed to conduct an appropriate EMG study.
2. Dr. Jan failed to communicate appropriately with the referring or concurrent treating physicians or chiropractors.
3. Dr. Jan inappropriately provided medical care or physical therapy services that departed from the scope of the original referral.
4. Dr. Jan failed to ensure that physical therapy provided in his office was provided by duly licensed persons.
5. Dr. Jan failed to ensure that documentation of physical therapy services provided in his office was appropriate in terms of development of a treatment plan, reassessment and renewal of the treatment plan, description of services rendered, and signatures of persons providing the services.

P. Dr. Jan provided care to Patient D between approximately September 1997 and December 1997. Dr. Jan's care of Patient D did not meet acceptable standards of care in that:

1. Dr. Jan failed to communicate appropriately with the referring or concurrent treating physicians.
2. Dr. Jan inappropriately provided medical care or physical therapy services that departed from the scope of the original referral.
3. Dr. Jan failed to take a history from the patient that was adequate to substantiate the injury or the diagnosis.
4. Dr. Jan failed to ensure that physical therapy provided

in his office was provided by duly licensed persons.

5. Dr. Jan failed to ensure that documentation of physical therapy services provided in his office was appropriate in terms of development of a treatment plan, reassessment and renewal of the treatment plan, description of services rendered, and signatures of persons providing the services.

Q. Dr. Jan provided care to Patient E between approximately September 1997 and November 1997. Dr. Jan's care of Patient E did not meet acceptable standards of care in that:

1. Dr. Jan failed to take a history from the patient that was adequate to substantiate the injury or the diagnosis.
2. Dr. Jan failed to ensure that physical therapy provided in his office was provided by duly licensed persons.
3. Dr. Jan failed to ensure that documentation of physical therapy services provided in his office was appropriate in terms of development of a treatment plan, reassessment and renewal of the treatment plan, description of services rendered, and signatures of persons providing the services.

R. Dr. Jan provided care to Patient F between approximately August 1997 and February 1998. Dr. Jan's care of Patient F did not meet acceptable standards of care in that:

1. Dr. Jan failed to conduct an appropriate EMG study.
2. Dr. Jan failed to take a history from the patient that was adequate to substantiate the injury or the diagnosis.

3. Dr. Jan failed to ensure that physical therapy provided in his office was provided by duly licensed persons.
 4. Dr. Jan failed to ensure that documentation of physical therapy services provided in his office was appropriate in terms of development of a treatment plan, reassessment and renewal of the treatment plan, description of services rendered, and signatures of persons providing the services.
- S. Dr. Jan provided care to Patient H between approximately July 1997 and June 1998. Dr. Jan's care of Patient H did not meet acceptable standards of care in that:
1. Dr. Jan failed to take a history from the patient that was adequate to substantiate the injury or the diagnosis.
 2. Dr. Jan failed to ensure that physical therapy provided in his office was provided by duly licensed persons.
 3. Dr. Jan failed to ensure that documentation of physical therapy services provided in his office was appropriate in terms of development of a treatment plan, reassessment and renewal of the treatment plan, description of services rendered, and signatures of persons providing the services.
- T. Dr. Jan provided care to Patient I between approximately August 1997 and February 1998. Dr. Jan's care of Patient I did not meet acceptable standards of care in that:
1. Dr. Jan failed to communicate appropriately with the referring or concurrent treating physicians or podiatrists.

2. Dr. Jan inappropriately provided medical care or physical therapy services that departed from the scope of the original referral.
3. Dr. Jan failed to ensure that physical therapy provided in his office was provided by duly licensed persons.
4. Dr. Jan failed to ensure that documentation of physical therapy services provided in his office was appropriate in terms of development of a treatment plan, reassessment and renewal of the treatment plan, description of services rendered, and signatures of persons providing the services.

SPECIFICATION OF CHARGES

FIRST THROUGH THREE HUNDRED THIRTY-SECOND SPECIFICATIONS

Respondent is charged with **PRACTICING THE PROFESSION FRAUDULENTLY OR BEYOND ITS AUTHORIZED SCOPE**, in violation of New York Education Law §6530(2) in that Petitioner charges:

1-332. The allegations in paragraphs K and K(A)(1) through K(A)(61), K(B)(1) through K(B)(27), K(C)(1) through K(C)(51), K(D)(1) through K(D)(9), K(E)(1) through K(E)(15), K(F)(1) through K(F)(10), K(G)(1) through K(G)(15), K(H)(1) through K(H)(6), K(I)(1) through K(I)(24), K(J)(1) through K(J)(16), and paragraphs L and L(A)(1) through L(A)(31), L(B)(1) through L(B)(34), L(C)(1) through L(C)(3), L(D)(1) through L(D)(5), L(E)(1) through L(E)(12), L(F)(1) through L(F)(13).

THREE HUNDRED THIRTY-THIRD SPECIFICATION

Respondent is charged with **PERMITTING ANY PERSON TO SHARE IN THE FEES FOR PROFESSIONAL SERVICES**, in violation of New York Education Law §6530(19) in that Petitioner charges:

333. The allegations in paragraphs A, B, and C.

THREE HUNDRED THIRTY-FOURTH THROUGH SIX HUNDRED THIRTY-SEVENTH SPECIFICATIONS

Respondent is charged with **DELEGATING PROFESSIONAL RESPONSIBILITIES TO A PERSON WHEN THE LICENSEE DELEGATING SUCH RESPONSIBILITIES KNOWS OR HAS REASON TO KNOW THAT SUCH PERSON IS NOT QUALIFIED, BY TRAINING, BY EXPERIENCE, OR BY LICENSURE, TO PERFORM THEM**, in violation of New York Education Law §6530(25) in that Petitioner charges:

334-637. The allegations in paragraphs K and K(A)(6) through K(A)(61), K(B)(4) through K(B)(27), K(C)(5) through K(C)(51), K(D)(4) through K(D)(9), K(E)(4) through K(E)(15), K(F)(6) through K(F)(10), K(G)(4) through K(G)(15), K(H)(3) through K(H)(6), K(I)(1) through K(I)(24), K(J)(1) through K(J)(16), and paragraphs L and L(A)(1) through L(A)(31), L(B)(1) through L(B)(34), L(C)(1) through L(C)(3), L(D)(1) through L(D)(5), L(E)(1) through L(E)(12), L(F)(1) through L(F)(13).

**SIX HUNDRED THIRTY-EIGHTH THROUGH NINE HUNDRED FORTY-FIRST
SPECIFICATIONS**

Respondent is charged with **PERMITTING, AIDING OR ABETTING AN UNLICENSED PERSON TO PERFORM ACTIVITIES REQUIRING A LICENSE** , in violation of New York Education Law §6530(11) in that Petitioner charges:

638-941. The allegations in paragraphs K and K(A)(6) through K(A)(61), K(B)(4) through K(B)(27), K(C)(5) through K(C)(51), K(D)(4) through K(D)(9), K(E)(4) through K(E)(15), K(F)(6) through K(F)(10), K(G)(4) through K(G)(15), K(H)(3) through K(H)(6), K(I)(1) through K(I)(24), K(J)(1) through K(J)(16), and paragraphs L and L(A)(1) through L(A)(31), L(B)(1) through L(B)(34), L(C)(1) through L(C)(3), L(D)(1) through L(D)(5), L(E)(1) through L(E)(12), L(F)(1) through L(F)(13).

**NINE HUNDRED FORTY-SECOND THROUGH NINE HUNDRED FIFTY-FOURTH
SPECIFICATIONS**

Respondent is charged with professional misconduct by reason of **PRACTICING ... BEYOND THE SCOPE PERMITTED BY LAW**, in violation of New York Education Law §6530(24) in that Petitioner charges:

942-954. The factual allegations in paragraphs K and K(B)(4) through K(B)(8), K(D)(4), K(E)(4) through K(E)(7), K(F)(6) through K(F)(7).

NINE HUNDRED FIFTY-FIFTH SPECIFICATION

Respondent is charged with professional misconduct by reason of

PRACTICING THE PROFESSION WITH NEGLIGENCE ON MORE THAN ONE OCCASION, in violation of New York Education Law §6530(3) in that Petitioner charges two or more of the following:

955. The factual allegations in paragraphs M and M(1) through M(5), N and N(1) through N(4), O and O(1) through O(5), P and P(1) through P(5), Q and Q(1) through Q(3), R and R(1) through R(4), S and S(1) through S(3), T and (T)(1) through T(4).

NINE HUNDRED FIFTY-SIXTH SPECIFICATION

Respondent is charged with professional misconduct by reason of **PRACTICING THE PROFESSION WITH INCOMPETENCE ON MORE THAN ONE OCCASION**, in violation of New York Education Law §6530(5) in that Petitioner charges two or more of the following:

956. The factual allegations in paragraphs M and M(1) through M(5), N and N(1) through N(4), O and O(1) through O(5), P and P(1) through P(5), Q and Q(1) through Q(3), R and R(1) through R(4), S and S(1) through S(3), T and (T)(1) through T(4).

NINE HUNDRED FIFTY-SEVENTH THROUGH ONE THOUSAND TWO HUNDRED EIGHTY-EIGHT SPECIFICATIONS

Respondent is charged with **CONDUCT IN THE PRACTICE OF MEDICINE WHICH EVIDENCES MORAL UNFITNESS TO PRACTICE MEDICINE**, in violation of New York Education Law §6530(20) in that Petitioner charges:

957-1,288. The allegations in paragraphs K and K(A)(1) through K(A)(61), K(B)(1) through K(B)(27), K(C)(1) through K(C)(51), K(D)(1) through K(D)(9), K(E)(1) through K(E)(15), K(F)(1) through K(F)(10), K(G)(1) through K(G)(15), K(H)(1) through K(H)(6), K(I)(1) through K(I)(24), K(J)(1) through K(J)(16), and paragraphs L and L(A)(1) through L(A)(31), L(B)(1) through L(B)(34), L(C)(1) through L(C)(3), L(D)(1) through L(D)(5), L(E)(1) through L(E)(12), L(F)(1) through L(F)(13).

DATED: *April 4*, 2001
Albany, New York


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

APPENDIX A

K(A). Specifically, with regard to Patient A:

(a) medical care

1. For medical care provided on 9/26/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$154.30, even though MD#1, who was not an authorized physician, was the true attending doctor. The same allegation applies to medical care provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
2. 10/9/97, \$49.26
3. 10/10/97, \$425.88
4. 10/17/97, \$241.50
5. 10/30/97, \$49.26

(b) physical therapy

6. For physical therapy provided on 9/29/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed to provide physical therapy. The same allegation applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
7. 10/1/97, \$67.10
8. 10/3/97, \$67.10
9. 10/6/97, \$67.10
10. 10/8/97, \$67.10
11. 10/13/97, \$67.10
12. 10/15/97, \$67.10
13. 10/16/97, \$67.10
14. 10/20/97, \$67.10
15. 10/22/97, \$67.10
16. 10/24/97, \$67.10
17. 10/27/97, \$67.10
18. 10/29/97, \$67.10
19. 10/31/97, \$67.10
20. 11/3/97, \$67.10
21. 11/5/97, \$67.10
22. 11/7/97, \$67.10
23. 11/10/97, \$67.10
24. 11/12/97, \$67.10
25. 11/14/97, \$67.10
26. 11/17/97, \$67.10
27. 2/16/98, \$67.10
28. 2/17/98, \$67.10
29. 2/18/98, \$67.10
30. 2/19/98, \$67.10
31. 2/23/98, \$67.10
32. 2/25/98, \$67.10
33. 2/27/98, \$67.10

34.	3/3/98, \$67.10
35.	3/4/98, \$67.10
36.	3/10/98, \$67.10
37.	3/11/98, \$67.10
38.	3/13/98, \$67.10
39.	3/16/98, \$67.10
40.	3/18/98, \$67.10
41.	3/20/98, \$67.10
42.	3/23/98, \$67.10
43.	3/25/98, \$67.10
44.	3/27/98, \$67.10
45.	3/30/98, \$67.10
46.	4/1/98, \$67.10
47.	4/6/98, \$67.10
48.	4/8/98, \$67.10
49.	4/10/98, \$67.10
50.	4/14/98, \$67.10
51.	4/17/98, \$67.10
52.	4/20/98, \$67.10
53.	4/22/98, \$67.10
54.	4/24/98, \$67.10
55.	4/27/98, \$67.10
56.	4/29/98, \$67.10
57.	5/1/98, \$67.10
58.	5/6/98, \$67.10
59.	5/11/98, \$67.10
60.	5/13/98, \$67.10
61.	5/15/98, \$67.10.

TOTAL \$4,677.50

K(B). Specifically, with regard to Patient B:

(a) medical care

1. For medical care provided on 10/3/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$49.26, even though MD#1, who was not an authorized physician, was the true attending doctor. The same allegation applies to medical care provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
2. 10/31/97, \$49.26
3. 11/26/97, \$49.26

(b) physical therapy

4. For physical therapy provided on 9/9/97*, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though Dr. Jan was not an authorized physician on dates of services prior to 9/25/97 marked by an asterisk, and even though the persons who provided the physical therapy were not duly licensed to provide physical therapy. The same allegation

applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:

5. 9/11/97*, \$67.10
6. 9/16/97*, \$67.10
7. 9/18/97*, \$67.10
8. 9/23/97*, \$67.10
9. 9/25/97, \$67.10
10. 9/29/97, \$67.10
11. 11/4/97, \$67.10
12. 11/5/97, \$67.10
13. 11/10/97, \$67.10
14. 11/17/97, \$67.10
15. 11/19/97, \$67.10
16. 11/21/97, \$67.10
17. 11/24/97, \$67.10
18. 11/25/97, \$67.10
19. 12/1/97, \$67.10
20. 12/3/97, \$67.10
21. 12/8/97, \$67.10
22. 12/10/97, \$67.10
23. 12/12/97, \$67.10
24. 12/15/97, \$67.10
25. 12/17/97, \$67.10
26. 12/29/97, \$67.10
27. 1/7/98, \$67.10

TOTAL \$2,429.78

K(C). Specifically, with regard to Patient C:

(a) medical care

1. For medical care provided on 9/26/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$49.26, even though MD#1, who was not an authorized physician, was the true attending doctor. The same allegation applies to medical care provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
 2. 9/29/97, \$106.52
 3. 10/27/97, \$49.26
 4. 11/26/97, \$49.26

(b) physical therapy

5. For physical therapy provided on 10/1/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though Dr. Jan was not an authorized physician on dates of services prior to 9/25/97 marked by an asterisk, and even though the persons who provided the physical therapy were not duly licensed to provide physical therapy. The same allegation applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the

following additional amounts of money:

6. 10/8/97, \$67.10
7. 10/13/97, \$67.10
8. 10/15/97, \$67.10
9. 10/173/97, \$67.10
10. 10/20/97, \$67.10
11. 10/22/97, \$67.10
12. 11/5/97, \$67.10
13. 11/10/97, \$67.10
14. 11/12/97, \$67.10
15. 11/19/97, \$67.10
16. 11/21/97, \$67.10
17. 11/24/97, \$67.10
18. 12/2/97, \$67.10
19. 12/4/97, \$67.10
20. 12/8/97, \$67.10
21. 12/12/97, \$67.10
22. 12/17/97, \$67.10
23. 12/18/97, \$67.10
24. 12/31/97, \$67.10
25. 1/5/98, \$67.10
26. 1/9/98, \$67.10
27. 1/12/98, \$67.10
28. 1/15/98, \$67.10
29. 1/16/98, \$67.10
30. 1/19/98, \$67.10
31. 1/21/98, \$67.10
32. 1/23/98, \$67.10
33. 1/26/98, \$67.10
34. 1/28/98, \$67.10
35. 1/30/98, \$67.10
36. 2/2/98, \$67.10
37. 2/4/98, \$67.10
38. 2/12/98, \$67.10
39. 2/16/98, \$67.10
40. 2/18/98, \$67.10
41. 2/23/98, \$67.10
42. 2/27/98, \$67.10
43. 3/3/98, \$67.10
44. 3/5/98, \$67.10
45. 3/11/98, \$67.10
46. 3/16/98, \$67.10
47. 3/20/98, \$67.10
48. 3/23/98, \$67.10
49. 3/27/98, \$67.10
50. 3/30/98, \$67.10
51. 4/1/98, \$67.10

TOTAL \$3,408.00

K(D). Specifically, with regard to Patient D:

(a) medical care

1. For medical care provided on 10/24/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$425.88, even though MD#1, who was not an authorized physician, was the true attending doctor. The same allegation applies to medical care provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
2. 10/31/97, \$185.73
3. 11/10/97, \$163.78

(b) physical therapy

4. For physical therapy provided on 9/11/97*, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though Dr. Jan was not an authorized physician on dates of services prior to 9/25/97 marked by an asterisk, and even though the persons who provided the physical therapy were not duly licensed to provide physical therapy. The same allegation applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
5. 10/28/97, \$67.10
6. 11/14/97, \$67.10
7. 11/17/97, \$67.10
8. 11/20/97, \$67.10
9. 12/31/97, \$67.10

TOTAL \$1,177.99

K(E). Specifically, with regard to Patient E:

(a) medical care

1. For medical care provided on 10/3/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$163.78, even though MD#1, who was not an authorized physician, was the true attending doctor. The same allegation applies to medical care provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
2. 10/13/97, \$49.26
3. 11/11/97, \$49.26

(b) physical therapy

4. For physical therapy provided on 9/16/97*, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though Dr. Jan was not an authorized

physician on dates of services prior to 9/25/97 marked by an asterisk, and even though the persons who provided the physical therapy were not duly licensed to provide physical therapy. The same allegation applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:

5. 9/16/97*, \$67.10
6. 9/18/97*, \$67.10
7. 9/24/97*, \$67.10
8. 9/26/97, \$67.10
9. 10/1/97, \$67.10
10. 10/6/97, \$67.10
11. 10/17/97, \$67.10
12. 10/20/97, \$67.10
13. 10/27/97, \$67.10
14. 11/5/97, \$67.10
15. 11/12/97, \$67.10

TOTAL \$1,067.50

K(F). Specifically, with regard to Patient F:

(a) medical care

1. For medical care provided on 10/3/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$241.50, even though MD#1, who was not an authorized physician, was the true attending doctor. The same allegation applies to medical care provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
 2. 10/3/97, \$452.92
 3. 10/3/97, \$425.88
 4. 10/9/97, 49.26
 5. 11/11/97, 49.26

(b) physical therapy

6. For physical therapy provided on 9/16/97*, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though Dr. Jan was not an authorized physician on dates of services prior to 9/25/97 marked by an asterisk, and even though the persons who provided the physical therapy were not duly licensed to provide physical therapy. The same allegation applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
 7. 9/23/97*, \$67.10
 8. 10/2/97, \$67.10
 9. 10/21/97, \$67.10
 10. 11/4/97, \$67.10

TOTAL \$1,554.32

K(G). Specifically, with regard to Patient G:

(a) medical care

1. For medical care provided on 10/7/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$154.30, even though MD#1, who was not an authorized physician, was the true attending doctor. The same allegation applies to medical care provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
2. 11/18/97, \$163.78
3. 11/21/97, \$241.50

(b) physical therapy

4. For physical therapy provided on 11/11/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed to provide physical therapy. The same allegation applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
5. 11/12/97, \$67.10
6. 11/13/97, \$67.10
7. 11/17/97, \$67.10
8. 11/18/97, \$67.10
9. 11/20/97, \$67.10
10. 11/25/97, \$67.10
11. 11/26/97, \$67.10
12. 12/2/97, \$67.10
13. 12/5/97, \$67.10
14. 12/9/97, \$67.10
15. 12/10/97, \$67.10

TOTAL \$1,364.78

K(H). Specifically, with regard to Patient H:

(a) medical care

1. For medical care provided on 11/10/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$106.52, even though MD#1, who was not an authorized physician, was the true attending doctor. The same allegation applies to medical care provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
2. 12/8/97, \$49.26

(b) physical therapy

3. For physical therapy provided on 11/12/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed physical therapists. The same allegation applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
 4. 11/24/97, \$67.10
 5. 12/2/97, \$67.10
 6. 12/15/97, \$67.10

TOTAL \$424.18

K(I). Specifically, with regard to Patient I:

(a) medical care

None

(b) physical therapy

1. For physical therapy provided on 1/14/98, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed physical therapists. The same allegation applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
 2. 1/20/98, \$67.10
 3. 1/21/98, \$67.10
 4. 1/23/98, \$67.10
 5. 1/26/98, \$67.10
 6. 1/30/98, \$67.10
 7. 2/2/98, \$67.10
 8. 2/6/98, \$67.10
 9. 2/9/98, \$67.10
 10. 2/16/98, \$67.10
 11. 2/18/98, \$67.10
 12. 2/23/98, \$67.10
 13. 3/3/98, \$67.10
 14. 3/4/98, \$67.10
 15. 3/9/98, \$67.10
 16. 3/12/98, \$67.10
 17. 3/16/98, \$67.10
 18. 3/18/98, \$67.10
 19. 3/20/98, \$67.10
 20. 3/23/98, \$67.10
 21. 3/26/98, \$67.10
 22. 3/30/98, \$67.10

- 23. 4/6/98, \$67.10
- 24. 4/10/98, \$67.10

TOTAL \$1,610.40

K(J). Specifically, with regard to Patient J:

(a) medical care

None

(b) physical therapy

- 1. For physical therapy provided on 10/24/97, Dr. Jan signed and submitted a C-4 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed physical therapists. The same allegation applies to physical therapy provided on the following additional dates and to C-4 billing forms seeking the following additional amounts of money:
 - 2. 10/27/97, \$67.10
 - 3. 10/28/97, \$67.10
 - 4. 11/6/97, \$67.10
 - 5. 11/7/97, \$67.10
 - 6. 11/11/97, \$67.10
 - 7. 11/12/97, \$67.10
 - 8. 11/17/97, \$67.10
 - 9. 12/3/97, \$67.10
 - 10. 12/4/97, \$67.10
 - 11. 12/5/97, \$67.10
 - 12. 12/15/97, \$67.10
 - 13. 12/16/97, \$67.10
 - 14. 12/17/97, \$67.10
 - 15. 12/23/97, \$67.10
 - 16. 1/13/98, \$67.10

TOTAL \$1,073.60

APPENDIX B

L(A). Specifically, with regard to Patient K:

(a) medical care

None

(b) physical therapy

1. For physical therapy provided on 11/17/97, Dr. Jan signed and submitted a HCFA-1500 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed physical therapists. The same allegation applies to physical therapy provided on the following additional dates and to HCFA-1500 billing forms seeking the following additional amounts of money:
2. 11/19/97, \$67.10
3. 11/21/97, \$67.10
4. 11/24/97, \$67.10
5. 11/25/97, \$67.10
6. 11/26/97, \$67.10
7. 12/17/97, \$67.10
8. 12/24/97, \$67.10
9. 12/30/97, \$67.10
10. 12/31/97, \$67.10
11. 1/2/98, \$67.10
12. 1/5/98, \$67.10
13. 1/9/98, \$67.10
14. 1/12/98, \$67.10
15. 1/23/98, \$67.10
16. 1/27/98, \$67.10
17. 1/28/98, \$67.10
18. 2/2/98, \$67.10
19. 2/4/98, \$67.10
20. 2/6/98, \$67.10
21. 2/9/98, \$67.10
22. 2/11/98, \$67.10
23. 2/13/98, \$67.10
24. 2/17/98, \$67.10
25. 2/18/98, \$67.10
26. 2/20/98, \$67.10
27. 2/23/98, \$67.10
28. 2/25/98, \$67.10
29. 2/27/98, \$67.10
30. 3/4/98, \$67.10
31. 3/6/98, \$67.10

TOTAL 2,080.10

L(B). Specifically, with regard to Patient L:

(a) medical care

None

(b) physical therapy

1. For physical therapy provided on 11/14/97, Dr. Jan signed and submitted a HCFA-1500 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed physical therapists. The same allegation applies to physical therapy provided on the following additional dates and to HCFA-1500 billing forms seeking the following additional amounts of money:
2. 11/17/97, \$67.10
3. 11/19/97, \$67.10
4. 11/21/97, \$67.10
5. 11/24/97, \$67.10
6. 11/25/97, \$67.10
7. 11/26/97, \$67.10
8. 12/1/97, \$67.10
9. 12/3/97, \$67.10
10. 12/8/97, \$67.10
11. 12/12/97, \$67.10
12. 12/15/97, \$67.10
13. 12/17/97, \$67.10
14. 12/19/97, \$67.10
15. 12/22/97, \$67.10
16. 12/24/97, \$67.10
17. 12/31/97, \$67.10
18. 1/2/98, \$67.10
19. 1/5/98, \$67.10
20. 1/9/98, \$67.10
21. 1/16/98, \$67.10
22. 1/21/98, \$67.10
23. 1/23/98, \$67.10
24. 1/26/98, \$67.10
25. 1/28/98, \$67.10
26. 2/2/98, \$67.10
27. 2/4/98, \$67.10
28. 2/6/98, \$67.10
29. 2/9/98, \$67.10
30. 2/11/98, \$67.10
31. 2/16/98, \$67.10
32. 2/20/98, \$67.10
33. 2/23/98, \$67.10
34. 2/25/98, \$67.10

TOTAL \$2,281.40

L(C). Specifically, with regard to Patient M:

(a) medical care

None

(b) physical therapy

1. For physical therapy provided on 11/14/97, Dr. Jan signed and submitted a HCFA-1500 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed physical therapists. The same allegation applies to physical therapy provided on the following additional dates and to HCFA-1500 billing forms seeking the following additional amounts of money:
2. 11/19/97, \$67.10
3. 11/24/97, \$67.10

TOTAL \$201.30

L(D). Specifically, with regard to Patient N:

(a) medical care

None

(b) physical therapy

1. For physical therapy provided on 11/19/97, Dr. Jan signed and submitted a HCFA-1500 billing form, seeking \$67.10, even though Dr. Jan knew or had reason to know that the persons who were providing physical therapy were not duly licensed physical therapists. The same allegation applies to physical therapy provided on the following additional dates and to HCFA-1500 billing forms seeking the following additional amounts of money:
2. 11/20/97, \$67.10
3. 11/26/97, \$67.10
4. 12/3/97, \$67.10
5. 12/9/97, \$67.10

TOTAL \$335.50

L(E). Specifically, with regard to Patient O:

(a) medical care

None

(b) physical therapy

1. For physical therapy provided on 11/14/97, Dr. Jan signed and submitted a HCFA-1500 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed physical therapists. The same allegation applies to physical therapy provided on the following additional dates and to HCFA-1500 billing forms seeking the following additional amounts of money:
 2. 11/17/97, \$67.10
 3. 11/19/97, \$67.10
 4. 11/21/97, \$67.10
 5. 11/24/97, \$67.10
 6. 12/1/97, \$67.10
 7. 12/5/97, \$67.10
 8. 12/8/97, \$67.10
 9. 12/12/97, \$67.10
 10. 12/16/97, \$67.10
 11. 12/19/97, \$67.10
 12. 12/22/97, \$67.10

TOTAL \$805.20

L(F). Specifically, with regard to Patient P:

(a) medical care

None

(b) physical therapy

1. For physical therapy provided on 11/17/97, Dr. Jan signed and submitted a HCFA-1500 billing form, seeking \$67.10, even though the persons who provided the physical therapy were not duly licensed physical therapists. The same allegation applies to physical therapy provided on the following additional dates and to HCFA-1500 billing forms seeking the following additional amounts of money:
 2. 11/19/97, \$67.10
 3. 11/21/97, \$67.10
 4. 11/24/97, \$67.10
 5. 11/26/97, \$67.10
 6. 12/8/97, \$67.10
 7. 12/12/97, \$67.10
 8. 12/15/97, \$67.10
 9. 12/19/97, \$67.10
 10. 12/31/97, \$67.10
 11. 1/7/98, \$67.10
 12. 1/9/98, \$67.10
 13. 1/14/98, \$67.10

TOTAL \$872.30

EXHIBIT "B"

Medford East Medical Services, P.C.
Medford East Pain Management and Rehabilitation Center
Aesculapeus Medical Group, L.L.P.
Thomas F. Jan, D.O., P.C.

EXHIBIT "C"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
3. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Agreement and Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
4. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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].
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and Respondent's staff at practice locations or OPMC offices.
7. Respondent shall maintain complete, legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
8. a) Within 15 days of the effective date of this Consent Agreement and Order, Respondent shall submit to the Director of OPMC for prior written approval the name and curriculum vitae of a proposed "practice monitor," who is a licensed physician in New York State, who is board-certified in physical medicine and rehabilitation, and who is not a family member,

personal friend, former employee or independent contractor, or any other person or entity, who could be deemed in the sole discretion of the Director of OPMC to have a potential conflict of interest while carrying out monitoring responsibilities. If, after 30 days from the effective date of this Consent Agreement and Order, Respondent has not proposed a practice monitor who is acceptable to the Director of OPMC, Respondent's license shall be suspended until such time as Respondent proposes a practice monitor who is acceptable to the Director of OPMC. Respondent shall ensure that the practice monitor is familiar with this Consent Agreement and Order and is willing to report to the Director of OPMC.

- b) For a period of 3 years from the Director of OPMC's approval of the practice monitor, Respondent shall practice medicine only under the monitoring of the practice monitor. The practice monitor need not be on-site with Respondent, unless determined otherwise by the Director of OPMC, but the practice monitor shall visit Respondent's medical practice at least monthly on a random unannounced basis and shall examine as many records as the practice monitor and Director of OPMC deem necessary in order to fulfill the practice monitor's responsibilities. Respondent shall ensure that the practice monitor is in a position to regularly observe and assess Respondent's medical practice, including, but not limited to, Respondent's billing practices.
 - c) Respondent shall authorize the practice monitor to have access to any records the practice monitor and the director of OPMC deem necessary to review in order to fulfill the practice monitor's responsibilities, including, but not limited to, Respondent's medical and billing records. The review will determine whether Respondent's medical practice meets acceptable standards of care.
 - d) Respondent shall also authorize the practice monitor to submit a written narrative report to the Director of OPMC within 15 days of the conclusion of every 3 month period throughout the 3 year period of monitoring. The narrative report shall address all aspects of Respondent's medical practice, including, but not limited to, clinical practice, evaluation and treatment of patients, preparation and maintenance of records, billing practices, general demeanor, time and attendance, controlled substance prescribing, administering, dispensing, inventorying and disposal, and other conduct the practice monitor deems appropriate to report. In addition, Respondent shall authorize the practice monitor to report within 24 hours to the Director of OPMC any refusal to cooperate, suspected impairment, inappropriate behavior, questionable medical or billing practice, or possible misconduct.
 - e) Respondent shall be solely responsible for paying all of the practice monitor's fees and expenses associated with the practice monitor's performance of the duties described herein.
9. a) Throughout the entire 5 year period of Respondent's probation, Respondent shall remain drug/alcohol free, Respondent shall remain active in a self-help group such as Alcoholics Anonymous or Caduceus, Respondent shall notify all treating physicians of Respondent's history, and Respondent shall advise the Director of OPMC of any controlled or mood altering substance given or prescribed to Respondent by treating physicians.

- b) Within 15 days of the effective date of this Consent Agreement and Order, Respondent shall submit to the Director of OPMC for prior written approval the name and curriculum vitae of a proposed "sobriety monitor," who is a licensed physician in New York State, who is board-certified in a suitable specialty, and who is not a family member, personal friend, former employee or independent contractor, or any other person or entity, who could be deemed in the sole discretion of the Director of OPMC to have a potential conflict of interest while carrying out monitoring responsibilities. If, after 30 days from the effective date of this Consent Agreement and Order, Respondent has not proposed a sobriety monitor who is acceptable to the Director of OPMC, Respondent's license shall be suspended until such time as Respondent proposes a sobriety monitor who is acceptable to the Director of OPMC. Respondent shall ensure that the sobriety monitor is familiar with Respondent's history and is familiar with the terms of this Consent Agreement and Order. Respondent shall cause the sobriety monitor to report to the Director of OPMC any deviation from compliance with the terms of this Consent Agreement and Order. Respondent shall cause the sobriety monitor to submit required reports on a timely basis.
- c) For a period of 5 years from the effective date of this Consent Agreement and Order, the sobriety monitor shall conduct, and Respondent shall submit to, as many random unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol as the sobriety monitor and the Director of OPMC deem necessary in order to fulfill the sobriety monitor's responsibilities. This sobriety monitoring will be on a random 7 days a week, 24 hours a day, basis. Respondent shall report for a drug/alcohol screen within 4 hours of being contacted by the sobriety monitor. Respondent shall cause the monitor to report to the Director of OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.
- d) Also for a period of 5 years from the effective date of this Consent Agreement and Order, Respondent shall meet with the sobriety monitor on a regular basis as often as the sobriety monitor and the Director of OPMC deem necessary in order to fulfill the sobriety monitor's responsibilities. Respondent shall authorize the sobriety monitor to submit, and shall ensure that the sobriety monitor submits, a written narrative report to the Director of OPMC within 15 days of the conclusion of every 3 month period throughout the 5 year period of monitoring. The narrative report shall address all aspects of Respondent's sobriety, including, but not limited to, forensically valid results of all drug/alcohol tests, general demeanor, attendance at sobriety monitor and self-help group meetings, suspected impairment, controlled substance prescribing, administering, dispensing, inventorying and disposal, and other conduct or behavior the sobriety monitor deems appropriate to report.
- e) Respondent shall comply with any request from the Director of OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional.
- f) Respondent shall be solely responsible for paying all of the sobriety monitor's fees and expenses, including, but not limited to, testing fees and expenses, associated with the sobriety monitor's performance of the duties described herein.

10. Respondent shall enroll in and complete the following Continuing Medical Education ("CME") program: a minimum of 150 hours of American Osteopathic Association CME, with all 150 hours obtained in Category 1-A(a) ("Formal Osteopathic CME") and with a minimum of 40 hours of the 150 hours of CME obtained in fibromyalgia/myofascial pain/chronic pain or a suitable equivalent subject as determined by the Director of OPMC, and a minimum of another 40 hours of the 150 hours of CME obtained in physical medicine and rehabilitation or a suitable equivalent subject as determined by the Director of OPMC. Notwithstanding the above provisions of this paragraph, a minimum of another 20 hours of the 150 hours of CME shall be obtained by enrolling in, and submitting to the Director of OPMC test scores evidencing successful completion of, all of the American Medical Association's five part online self-testing Category 1 CME Ethics Curriculum Modules, module 1 of which is currently available and is entitled, "Patient Care - Making the Right Choices: The Code of Medical Ethics." This CME program shall be subject to the prior written approval of the Director of OPMC and be completed within 3 years of the effective date of this Consent Agreement and Order.
11. Throughout the entire 5 year period of Respondent's probation, Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with the last undesignated sentence of Section 230(18)(b) of the Public Health Law.
12. Respondent shall comply with this Consent Agreement and Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.