



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.
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NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

Kendrick A. Sears, M.D.
Chairman

Michael A. Gonzalez, R.P.A.
Vice Chair

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

Public

December 9, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Michael Bendert, RPA
7 North Oak Avenue
Endicott, NY 13760

Re: License No. 009205

Dear Mr. Bendert:

Enclosed is a copy of Order #BPMC 05-284 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect December 16, 2005.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to the 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: Marguerite A. Massett, Esq.
Hancock & Estabrook, LLP
1500 MONY Tower 1
PO Box 4976
Syracuse, NY 13221

IN THE MATTER
OF
MICHAEL BENDERT, R.P.A.

CONSENT
ORDER

BPMC No. #05-284

Upon the application of Michael Bendert, R.P.A. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

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

SO ORDERED.

DATE: 12-8-2005


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
MICHAEL BENDERT, R.P.A.**

**CONSENT
AGREEMENT
AND
ORDER**

Michael Bendert, R.P.A., representing that all of the following statements are true, states:

That on or about January 2, 2003, I was licensed to practice as a Physician Assistant in the State of New York, and issued License No. 009205 by the New York State Education Department.

My current address is 7 North Oak Avenue, Endicott, NY 13760, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

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

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the first specification, in full satisfaction of the charges against me, and 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.

My license to practice as a Registered Physician Assistant shall be limited to permanently preclude me from practicing in an urgent care setting or emergency room. My license shall be subject to a permanent limitation requiring me to have a supervising physician on-site while I practice. The on-site supervisor limitation may be removed upon my petition to the Director after the five year term of probation ends. The Director in his sole discretion will determine whether or not to remove this limitation.

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 shall impose the following conditions:

That, Respondent shall return any and all official New York State prescriptions to the Bureau of Narcotic Enforcement, and shall surrender Respondent's Controlled Substance Registration Certificate to the United

States Department of Justice, Drug Enforcement Administration, within thirty days of this Order's effective date. Further, within thirty days of returning these prescriptions and surrendering said registration, Respondent shall provide the Director of OPMC ("Director") with written evidence, satisfactory to the Director, that Respondent has complied with this condition.

That Respondent shall maintain active registration of Respondent's license with the New York State Education, Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this 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 ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement 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 adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 230 and 230-a and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement 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, 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 Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

I am aware and agree that regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the agreement which I propose and this application which I submit, or to decline to do so.

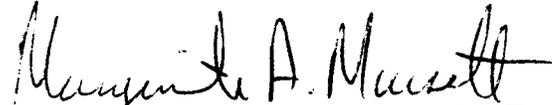
DATE: 12-1-05



MICHAEL BENDERT, R.P.A.
RESPONDENT

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

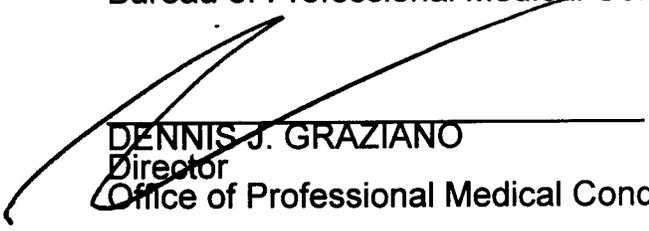
DATE: 12-1-05


MARGUERITE A. MASSETT, ESQ.
Attorney for Respondent

DATE: 12/2/05


ANTHONY M. BENIGNO
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 12/06/2005


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
MICHAEL BENDERT, R.P.A.

STATEMENT
OF
CHARGES

MICHAEL BENDERT, R.P.A., the Respondent, was authorized to practice as a physician assistant in New York State on or about January 2, 2003, by the issuance of license number 009205 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A, a 65 year old male (patient names are listed in the Appendix) on May 6, 2004, at Chenango Memorial Hospital in Norwich, New York. Patient A presented with a history of a grinder injury to his left dorsal ring finger over the proximal interphalangeal joint. Respondent treated him by cleansing and suturing the wound. Respondent discharged the patient with a prescription for Tylenol with codeine and advised him to follow up with his primary care physician. Respondent's medical care of Patient A failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to adequately evaluate the wound.
 2. Respondent failed to promptly refer Patient A to a hand surgeon.
 3. Respondent failed to place Patient A on appropriate antibiotics.

- B. Respondent treated Patient B, a 22 year old female who was 24 weeks pregnant, on March 5, 2004 at Chenango Memorial Hospital. Patient B presented with a history of an injury to her right hand with swelling. Respondent's medical care of Patient B failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to examine and record the fetal heart sounds.
- C. Respondent treated Patient C, a 25 year old female, on August 2, 2004 at Chenango Memorial Hospital. Patient C presented with a history of a red line on her right foot with tingling. She had a low-grade fever with otherwise normal vital signs. Respondent's medical care of Patient C failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to adequately examine and/or record his examination of Patient C.
 2. Respondent failed to adequately address Patient C's infection and/or treat with appropriate antibiotics.
- D. Respondent treated Patient D, a 41 year old male, on August 3, 2004 at Chenango Memorial Hospital. Patient D presented with a history of exposure to a bat. Respondent's medical care of Patient D failed to meet accepted standards of medical care in the following respects:
1. Respondent inappropriately ordered the immune globulin administered in Patient D's abdomen instead of the deltoid muscle.
- E. Respondent treated Patient E, a 60 year old female, on September 7, 2004 at Chenango Memorial Hospital. Patient E presented with a history of mild

at Chenango Memorial Hospital. Patient E presented with a history of mild abdominal pain and vomiting. Patient E had epigastric, bilateral flank and lower chest pain. Respondent's medical care of Patient E failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to conduct and/or record a rectal exam.
2. Respondent failed to order appropriate laboratory and/or monitoring tests.

F. On or about October 27, 2003, Respondent submitted an application for appointment to Chenango Memorial Hospital as a physician assistant. In response to the question, "Have you ever been named as a defendant in any criminal proceeding?", Respondent replied, "no". Respondent had previously been convicted of petit larceny on two occasions and driving while intoxicated on two occasions dating back to 1979 through 1984.

G. On or about December 28, 2004, Respondent submitted an application for employment with Allergy and Asthma Associates in Ithaca, New York. In the declaration of his employment application the Respondent declared, "...that he has no history of arrests or criminal records..." Respondent had previously been convicted of petit larceny on two occasions and driving while intoxicated on two occasions dating back to 1979 through 1984.

H. In his application for licensure submitted to the New York State Department of Education on November 18, 2002, Respondent replied "no" to the question, "Have you ever been found guilty after trial, or pleaded guilty, no contest, or nolo contendere to a crime (felony or misdemeanor) in any court?" Respondent had previously been convicted of petit larceny on two

occasions and driving while intoxicated on two occasions dating back to 1979 through 1984.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

1. The facts in paragraphs A and A1, A and A2, A and A3, B and B1, C and C1, C and C2, D and D1, E and E1, and/or E and E2.

SECOND THROUGH FOURTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

2. The facts in paragraph F.
3. The facts in paragraph G.
4. The facts in paragraph H.

DATE: *December 2*, 2005
Albany, New York


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

EXHIBIT "B"

1. The suspension of Respondent's license shall be terminated only upon a showing to the satisfaction of a Committee on Professional Conduct (Committee) of the State Board for Professional Medical Conduct (Board) that Respondent has successfully complied with or completed a course of therapy and ongoing evaluation, which successful compliance or completion must include a determination by said Committee **that Respondent is both fit and clinically competent to practice as a physician assistant.**

2. Upon Respondent's request, but after the passage of the minimum period of suspension, a meeting of a Committee shall be convened for the purpose of hearing and evaluating Respondent's showing referred to in paragraph 1. The Board will make reasonable attempts to convene a Committee not later than 90 days after Respondent's request, which shall not be deemed to have been perfected until receipt, by the Director of the Office of Professional Medical Conduct, (Director) of all that is required to be provided by Respondent pursuant to the Conditions imposed upon Respondent and pursuant to paragraph 3 below. The procedural nature of said proceeding shall be determined by the Board through the discretion of the Director of OPMC upon consultation with Counsel, Bureau of Professional Medical Conduct (Counsel). 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 for the purpose of addressing any and all facts, evidence, information, circumstances, or issues which do or may 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 pertaining to Respondent's compliance with the conditions imposed.
 - b. Any evidence which the Director or Counsel deems appropriate.

3. At the time that Respondent requests that a meeting of a Committee be scheduled, pursuant to paragraph 2, he shall provide the Director of OPMC with proof of competency and fitness, including, but not limited to:
 - a. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
 - b. A current, independent, in-depth chemical/alcohol dependency evaluation and neuro-psychiatric evaluation by a board-certified psychiatrist specializing in addiction medicine. Said evaluations shall be proposed by Respondent and approved in writing by the Director in advance of getting the evaluations.
 - c. A current in-depth clinical competency assessment performed by a program approved in advance by the Director of OPMC.
 - d. Upon request of the Director of OPMC, Respondent shall attend, participate in and cooperate with an interview with designated

personnel from the OPMC.

Provision of the aforesaid documents will not, alone, constitute a showing that Respondent is not incapacitated for active practice as a physician assistant.

4. If the Chairperson of the Committee issues an order (Order) finding that Respondent has regained fitness and competence to practice medicine, and therefore terminating 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 as a physician assistant shall 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 the following:
 - a. At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board-certified psychiatrist/neurologist or other licensed mental health practitioner designated by the Director. Said practitioner shall report to the Director regarding Respondent's condition and Respondent's fitness or incapacity to practice as a physician assistant.
5. Upon any denial of Respondent's petition for suspension termination made by the Committee, Respondent shall not again request convening a Committee until a minimum period of nine months has elapsed since such denial.
6. In addition to the aforementioned terms and any other terms added by the Committee upon the termination of Respondent's license suspension, he shall also be subject to the following standard terms of probation:
 - a. 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 the profession of medicine.
 - b. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
 - c. 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 days of each action.
 - d. 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.

- e. 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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
 - f. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty 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 day period. Respondent shall then notify the Director again at least 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 and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or are necessary to protect the public health.
 - g. 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 staff at practice locations or OPMC offices.
 - h. 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.
7. The aforementioned terms shall be the minimum probation terms, related to Respondent's fitness to practice, to be imposed on his practice upon terminating the suspension of his license, and that other terms may be added by the Committee, 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 suspension termination, may result in disciplinary action being brought against his charging professional misconduct as defined by the New York State Education Law, including but not limited to NY Education Law § 6530(29).