

November 4, 2014

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Expedito Herrera Castillo, M.D.  
[REDACTED]

John Thomas Viti, Esq.  
NYS Department of Health  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of Expedito Herrera Castillo, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 14-281) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Office of Professional Medical Conduct  
Riverview Center  
150 Broadway - Suite 355  
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Riverview Center  
150 Broadway – Suite 510  
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah  
Enclosure

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

COPY

IN THE MATTER  
OF  
EXPEDITO HERRERA CASTILLO, M.D.

DETERMINATION

AND

ORDER

BPMC #14-281

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("the Department"). A Notice of Hearing ("NOH") and Statement of Charges ("SOC"), both dated April 18, 2014, were served on Expedito Herrera Castillo, M.D. ("Respondent"), and a hearing was held pursuant to New York Public Health Law ("PHL") §230 and New York State Admin. Proc. Act §§301-307 and 401 on August 20, 2014 at the Department's offices at 90 Church Street, New York, New York. Minor amendments to the SOC were made on June 18, 2014 and a Second Amended SOC dated June 19, 2014 was served on Respondent. A copy of the NOH and Second Amended SOC is attached to this Determination and Order as Appendix 1. Gary J. Schwall, MBA, RPA, Cory S. Baker, MD, and Steven M. Lapidus, MD, duly designated members of the State Board for Professional Medical Conduct ("BPMC" or "Board"), served as the Hearing Committee ("Hearing Committee" "Committee" or "Panel") in this matter. Ann H. Gayle, Administrative Law Judge ("ALJ"), served as the Administrative Officer. The Department appeared by James E. Dering, Esq., General Counsel, by John Thomas Viti, Associate Counsel. The Respondent appeared *Pro Se*. Evidence was received and a transcript of this proceeding was made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

### **PROCEDURAL HISTORY**

Date of Service of NOH and SOC:	May 17, 2014
Answer Filed:	August 10, 2014
Pre-Hearing Conference:	June 18, 2014
Hearing Date:	August 20, 2014
Witness for Petitioner:	Annette Palk
Witness for Respondent:	Respondent
Deliberations Date:	August 20, 2014

### **STATEMENT OF THE CASE**

The Department charged the Respondent with one specification of professional misconduct under N.Y. Educ. Law §6530(29), to wit, violating any condition or limitation imposed on the licensee pursuant to PHL §230. Respondent denied the charges and allegations.

### **FINDINGS OF FACT**

The following Findings of Fact ("FOF") were made after a review of the entire record in this matter. Citations in brackets, which refer to transcript page numbers ["T"] and exhibits ["Ex"] that were accepted into evidence, represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings are unanimous unless otherwise stated.

1. Respondent was authorized to practice medicine in New York State on or about December 11, 1996, by the issuance of license number 205229 by the New York State Education Department. Respondent has not been registered since March 31, 2010. [Ex 1; Ex 2, p 44-45; T 39-41]
2. On March 23, 2006, Respondent signed a Consent Agreement which became effective on April 12, 2006 as Board Order # BPMC 06-69 ("Consent Agreement" or "Board Order"). The penalty to which Respondent consented and which the Board Order imposed included a suspension of Respondent's license for two years with the first four months actual and the remaining twenty months stayed, and probation to commence at the conclusion of the actual suspension. [Ex 3, Appendix "A"; Ex 5]
3. By signing the Consent Agreement, Respondent agreed to abide by the conditions imposed by the Board which included but were not limited to requirements that:
  - a. Respondent would advise the director of the Office of Professional Medical Conduct ("OPMC") of any change in his address [Ex 5, p 3; T 17-18]
  - b. beginning on May 12, 2006 and continuing for as long as Respondent remained licensed in NYS, Respondent, except during periods of actual suspension, would maintain active registration of his license and pay all registration fees [Ex 5, p 4; T 18-19]
  - c. Respondent would cooperate fully with OPMC in its administration and enforcement of the Board Order and in OPMC's investigations of matters concerning Respondent [Ex 5, p 4-5; T 19]
4. Respondent's address when he signed the Consent Agreement on March 23, 2006 was 90 Bushwick Avenue, Brooklyn, New York 11211. [Ex 5, p 3; T 17-18]
5. Respondent has relocated numerous times since the Board Order's effective date of April 12, 2006. Respondent's addresses since 2009 have included:
  - a. 321 East 13<sup>th</sup> Street, #14A, New York, New York 10003 [Ex 8; 9; 10; 19; T 22-24, 27, 31-33, 36]
  - b. 4121 Greenpoint Avenue, Sunnyside, New York 11104 [Ex 18; T 24-25]

- c. 69-10 Yellowstone Boulevard, Apartment 102, Forest Hills, New York 11375 [Ex 8; 9; 10; T 31-33, 38]
- d. 254-28 75<sup>th</sup> Avenue, Apartment 1, Glen Oaks, New York 11004 [Ex 6; 7; 8; 9; T 33, 35-38]

and Respondent did not advise the director of OPMC of the changes in his address.

[Ex 6; 7; 8; 9; 10; 18; 19; T 22-25, 27, 31-33, 35-38, 57-58]

- 6. Respondent has not maintained active registration of his NYS license to practice medicine with the NYS Education Department since March 31, 2010<sup>1</sup>. [Ex 1 p 44-45; T 39-42, 54-55, 56-57, 61-63]
- 7. Subsequent to the issuance of the Board Order, Medicaid and Medicare discontinued Respondent as a Provider in their programs, and except for a one-month period in approximately July 2008, Respondent has not practiced medicine in NYS since the Board Order's effective date of April 12, 2006. [T 41-42, 56-57, 58, 74]
- 8. From at least November 2009 to September 2013, OPMC made numerous attempts to address with Respondent the terms and conditions of the Order. [Ex 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; ; T 22-38, 45-47, 53]

#### CONCLUSIONS OF LAW

The Department's first and only Specification charged Respondent with committing professional misconduct under N.Y. Educ. Law §6530(29) by violating any condition or limitation imposed on the licensee pursuant to PHL §230. The Committee concludes unanimously that the first specification is sustained.

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<sup>1</sup> Even if Respondent has not maintained active registration of his NY medical license since 3/31/12, as noted on Ex 1, p 2, Respondent has still violated this condition of the Order

## DISCUSSION

The Department presented one witness, Annette Palk, Supervising Medical Conduct Investigator with OPMC, and Respondent testified in his own behalf. The Committee found both witnesses to be credible. Ms. Palk's testimony proved that Respondent violated conditions of the Board Order, and Respondent's testimony confirmed and supported Ms. Palk's testimony and the charges in Factual Allegations A.1, 2, and 3 that he:

- did not provide OPMC with his changing addresses (A.1),
- did not maintain active registration of his license (A.2),
- did not cooperate fully with OPMC in its administration and enforcement of the Order and its investigations of matters concerning Respondent (A.3), and
- did not respond in a timely manner to all OPMC requests for written periodic verification of his compliance with the Order (A.3).

However, in finding that the evidence did not support the Department's charge of Respondent's failure to comply with the following two sentences quoted in Factual Allegation A.3, the Committee did not consider these two sentences:

"Respondent shall meet with a person designated by the Director of OPMC, as directed"

and

"Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed"

but otherwise sustained charge A.3 as stated above.

## HEARING COMMITTEE DETERMINATION AS TO PENALTY

Pursuant to the Findings of Fact and Conclusions of Law set forth above, and upon considering the full range of sanctions available pursuant to PHL §230-a<sup>2</sup>, the

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<sup>2</sup> which includes censure and reprimand; suspension, wholly or partially, with or without terms or conditions; revocation; limitation on further licensure; monetary penalties; a course of education or training; performance of public service; and probation

Committee unanimously determined that the appropriate sanction is a revocation of Respondent's license. Except for one month in 2008, Respondent has not practiced medicine since 2006 when he entered into a Consent Agreement with this Board, and to date Respondent has failed to comply with several terms of that Consent Order and Agreement. Respondent's explanations as to why he did not work with OPMC in its attempts to have Respondent comply with the conditions of the Order and why he has not maintained active registration of his license convinced the Committee that any sanction short of revocation would not be appropriate. Furthermore, Respondent's testimony which (1) demonstrated his continuing erroneous belief that once his actual suspension ended he should not have continued to be subject to any conditions set forth in the Consent Agreement and (2) gave no indication that he would work with OPMC and fulfill the conditions of the Order going forward reinforced the Committee's determination that any sanction short of revocation would not be appropriate.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The misconduct charge under Educ. Law §6530(29) of violating any condition or limitation imposed on the licensee pursuant to PHL §230 is sustained.
2. Pursuant to PHL §230-a(4) Respondent's license to practice medicine shall be revoked.
3. This order shall be effective upon service on the Respondent by personal service or by certified mail as required under PHL §230(10)(h)

DATED: New York, New York  
October , 2014

OCT 31 2014

  
GARY J. SCHWALL, MBA, RPA, Chair  
CORY S. BAKER, M.D.  
STEVEN M. LAPIDUS, M.D.

To: John Thomas Viti  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007

Expedito Herrera Castillo  
P.O. Box [REDACTED]

Matter of Expedito Herrera Castillo, M.D.

# APPENDIX 1

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



IN THE MATTER  
OF  
EXPEDITO HERRERA CASTILLO, M.D.

NOTICE  
OF  
HEARING

TO: EXPEDITO HERRERA CASTILLO, M.D.  
REDACTED

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on June 25, 2014, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4<sup>th</sup> Floor, New York, NY 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

①

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here 

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner

hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATE: April 18, 2014  
New York, NY

  
\_\_\_\_\_  
Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be directed to: John Thomas Viti, Associate Counsel  
Bureau of Professional Medical Conduct  
90 Church Street, 4<sup>th</sup> Floor  
New York, NY 10007  
(212) 417-4450

EXHIBIT  
Departments-3A  
e 8/20/14

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

IN THE MATTER  
OF  
EXPEDITO HERRERA CASTILLO, M.D.

SECOND AMENDED  
STATEMENT  
OF  
CHARGES

EXPEDITO HERRERA CASTILLO, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 11, 1996, by the issuance of license number 205229 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. Respondent is currently subject to BPMC Order # BPMC 06-69 (henceforth "Consent Order"), which was issued upon a consent application signed by him on March 23, 2006, and adopted by the Consent Order, which went into effect on April 12, 2006. (This Consent Order is attached as Appendix "A".) The penalty imposed pursuant to the Consent Order was a 24 month suspension of license, with the first four months to be served as a period of actual suspension and with the last 20 months stayed, probation for 36 months, and a license limitation to permanently preclude prescribing of controlled substances.

1. Pursuant to the Consent Order, Respondent agreed to "advise the Director of the Office of Professional Medical of any change in address." Respondent has failed to notify the Director of the Office of Professional Medical of his change in address.

2. A Condition imposed pursuant to the Consent Order, required that "Respondent shall maintain active registration of his license with the New York State Education Department, Division of Professional Licensing Services (except during periods of actual suspension), and to pay all registration fees." Since on or after March 31, 2010, Respondent has failed to maintain an active registration of his license since that date.
3. A Condition imposed pursuant to the Consent Order, required that "Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and 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." Respondent has failed to comply with the terms of this Condition.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **VIOLATING ANY CONDITION OR LIMITATION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of the following:

1. Paragraph A and its subparts.

DATE:

June 19, 2014  
New York, New York

  
\_\_\_\_\_  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional Medical Conduct

# APPENDIX A

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

IN THE MATTER  
OF  
EXPEDITO HERRERA CASTILLO, M.D.

CONSENT  
ORDER

BPMC No. 06-69

Upon the application of (Respondent) EXPEDITO HERRERA CASTILLO, M.D. 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: 4-3-2006

  
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  
EXPEDITO HERRERA CASTILLO, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

EXPEDITO HERRERA CASTILLO, M.D., representing that all of the following statements are true, deposes and says:

That on or about December 11, 1996, I was licensed to practice as a physician in the State of New York, and issued License No. 205229 by the New York State Education Department.

My current address is [REDACTED], and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with fourteen 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 assert that I cannot successfully defend against at least one of the acts of misconduct alleged, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to New York Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for twenty-four months, with the first four months to be served as a period of actual suspension and with the last twenty months stayed.

Pursuant to New York Pub. Health Law § 230-a(9), I shall be placed on probation for thirty-six months, subject to the terms set forth in attached Exhibit "B."

Pursuant to N.Y. Pub. Health Law § 230-a(3), my license to practice medicine in New York State shall be limited to preclude prescribing of controlled substances.

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

That Respondent shall advise any patient for whom prescription of a controlled substance would be appropriate treatment that Respondent is not authorized to issue such prescription and shall advise such patient that another physician should be consulted. If Respondent practices in an office with one or more other licensed physicians, those other physicians may be consulted by the patient, at the patient's election; and

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 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 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. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Order are authorized by Public Health Law §§ 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 understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 3/23/06

  
EXPEDITO HERRERA CASTILLO, M.D.  
RESPONDENT

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

DATE: 7/31/06

\_\_\_\_\_  
JAMES H. CULLEN, ESQ.  
Attorney for Respondent

DATE: 5/23/06

\_\_\_\_\_  
FRANCIS D. RUDDY  
Assistant Counsel  
Bureau of Professional Medical Conduct

DATE: 3/28/06

\_\_\_\_\_  
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  
EXPEDITO HERRERA CASTILLO, M.D.

STATEMENT  
OF  
CHARGES

EXPEDITO HERRERA CASTILLO, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 11, 1996, by the issuance of license number 205229 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent treated Patient A for hypertension and other medical conditions at his office, 90 Bushwick Avenue, Brooklyn, New York ("Office") from in or about 1999 through in or about 2004.
1. In or about December, 1999, Patient A presented with an ear ache. Respondent failed to evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.
  2. In or about April, 2000, Patient A complained of shortness of breath. Respondent failed to properly evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.

3. Beginning in or about November, 1999, Patient A presented with hypertension. Respondent failed to properly evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.
  4. Beginning in or about January, 2001 through January, 2002, Respondent inappropriately prescribed antibiotics including Augmentin, Blaxin and Cipro for Patient A.
  5. In or about December, 1999; Respondent inappropriately prescribed iron for Patient A and failed to do necessary laboratory work-ups or note such work-ups, if any.
  6. In or about October, 2000, Respondent inappropriately prescribed Vallium .
  7. In or about January, 2002 Respondent inappropriately prescribed Provigil.
  8. In or about January, 2004, after Patient A sustained a myocardial infarction, Respondent inappropriately prescribed Viagra and Nitroglycerin at the same time.
- B. Respondent treated Patient B at his Office for back pain and other medical conditions from in or about December, 1999 through in or about June, 2002.

1. In spite of Patient B's complaints of back pain, Respondent failed to properly evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.
  1. Respondent inappropriately prescribed Vialium, Percocet, Duragesic, and Methadone.
- C. Respondent treated Patient C for back pain and other medical conditions at his Office from in or about July, 2001 through May, 2002.
  1. Patient C complained of back pain but Respondent failed to properly evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.
  2. Respondent inappropriately prescribed Methadone for Patient C.
  3. Respondent inappropriately prescribed Fosamax for Patient C.
- D. Respondent treated Patient D for pain and other medical conditions at his Office from in or about March, 2000 through in or about March, 2002.
  1. Patient D complained of chronic knee pain on her first visit in or about March, 2000. Nevertheless, Respondent failed to properly evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.

1. Respondent inappropriately prescribed Vicodin for the pain.
2. In or about March and July, 2001, Patient D presented with abdominal pain. Respondent failed to properly evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.
  - a. Respondent inappropriately prescribed Percocet, Xanax and Methadone for such pain.

E. Respondent treated Patient E for various medical conditions at his Office between in or about September, 1998 and February, 2004.

1. At the visit in or about January, 2004, Patient E complained of suprapubic pain. Respondent inappropriately diagnosed vaginitis and inappropriately prescribed metrogel.
2. Patient E presented with cough and Respondent made a diagnosis of COPD and chronic bronchitis. Nevertheless, Respondent failed to properly evaluate, treat or follow-up such conditions or note such evaluation, treatment or follow-up, if any.
3. Patient E suffered from chronic hypertension. Throughout the period, Respondent failed to properly evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.

F. Respondent treated Patient F at his Office for dizziness and other medical conditions from in or about September, 1998 through in or about February, 2002.

1. On her first visit Patient F complained of dizziness. Despite a diagnosis of near syncope and irregular heart rate, Respondent failed to perform an adequate physical examination or note such examination, if any.
2. At the visit in or about May, 1999, Patient F complained of chest pain but Respondent failed to perform an proper physical examination or note such examination, if any.
3. During this visit, Respondent diagnosed Patient F with hematochezia but failed to properly evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.
4. At the visit in or about December, 1999, Patient F presented with pain on urination and hypogastric pain. Respondent diagnosed a urinary tract infection and considered the possibility of Pelvic Inflammatory Disease but nevertheless failed to properly evaluate, treat or follow-up either condition or note such evaluation, treatment or follow-up, if any.
5. During visits in or about December, 1999 and January 2000, Patient F presented with abnormally high blood pressure. Respondent failed to properly evaluate, treat or follow-up such condition or note such evaluation, treatment or follow-up, if any.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**PRACTICING WITH 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. Paragraphs A and A1-8; B and B1 and 1(a), 2; C and C1-3; D and D1, 1(a), 2 and 2(a); E and E1-3; and/or F and F1-5.

**SECOND SPECIFICATION**

**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

2. Paragraphs A and A1-8; B and B1 and 1(a), 2; C and C1-3; D and D1, 1(a); and 2 and 2(a); E and E1-3; and/or F and F1-5.

**THIRD THROUGH SEVENTH SPECIFICATIONS**  
**PRACTICING WITH GROSS NEGLIGENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

3. Paragraphs A and A2, 3, 5, -8.
4. Paragraphs B and B1 and 1(a).
5. Paragraphs C and C2.
6. Paragraphs E and E3.
7. Paragraphs F and F1, 4, 5.

**EIGHTH SPECIFICATION**  
**PRACTICING WITH GROSS INCOMPETENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

8. Paragraphs A and A2, 3, 5, 8; B, B1 and 1(a); C and C2; E and E3; F and F1, 4, 5.

**NINTH THROUGH FOURTEENTH SPECIFICATIONS**

**FAILURE TO MAINTAIN RECORDS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

9. Paragraphs A and A1, 2, 3, 5.
10. Paragraphs B and B1.
11. Paragraphs C and C1.
12. Paragraphs D and D1, 3.
13. Paragraphs E and E2, 3.
14. Paragraphs F and F1 - 5.

DATE:

January 18, 2008  
New York, New York

\_\_\_\_\_  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

## EXHIBIT "B"

### 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 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.
3. 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.
4. 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 Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. 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 § 171(27)); State Finance Law § 18; CPLR § 5001; Executive Law § 32).
6. 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 fourteen 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.
7. 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 staff at practice locations or OPMC offices.

8. Respondent shall maintain complete and 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.
9. Respondent shall immediately surrender Respondent's DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA. Respondent shall provide documentary proof of such surrender, to the Director of OPMC within 30 days of the effective date of the Order.
10. Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.
11. Upon request, Respondent shall provide OPMC access to or copies of all patient records, office records, hospital records, records of administration, dispensing and/or prescribing of controlled substances, records of controlled substances purchases, official New York State prescription books, and any other records required under the law.
12. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
  - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
  - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
  - d. 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 Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

13. Respondent shall enroll in and complete a continuing education program as directed by the Director of the Office of Professional Medical Conduct. This continuing education program shall include, but not be limited to, subjects related to the prescribing of controlled and other prescription drugs, and is subject to the Director of OPMC's prior written approval and shall be completed prior to completion of the first year of the probation period.
14. Respondent shall comply with this 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.

**MODIFICATION ORDER**

**ATTACHMENT II**

**"ATTACHMENT II"**  
**Requirements for Closing a Medical Practice Following a**  
**Surrender of a Medical License**

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact person who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Licensee shall destroy all prescription pads bearing Licensee's name. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law §

.230-1, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.