

**NEW YORK**  
state department of  
**HEALTH**

Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

June 30, 2011

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

William Henry Stephan III, M.D.  
4080 Delaware Avenue  
Tonawanda, NY 14150

Re: License No. 171247

Dear Dr. Stephan:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 11-166. This order and any penalty provided therein goes into effect July 7, 2011.

Please direct any questions to: Board for Professional Medical Conduct, 433 River Street, Suite 303, Troy, NY 12180, telephone # (518)402-0863.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Kathleen M. Sweet, Esq.  
Gibson, McAskill & Crosby, LLP  
69 Delaware Avenue, Suite 900  
Buffalo, NY 14202-3866

**IN THE MATTER  
OF  
WILLIAM STEPHAN, M.D.**

**CONSENT  
ORDER**

BPMC No. 11-166

Upon the application of William Stephan, 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 Consent 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: 6/28/11

REDACTED

KENDRICK A. SEARS, M.D.  
Chair  
State Board for Professional Medical Conduct

**IN THE MATTER  
OF  
WILLIAM STEPHAN, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

William Stephan, M.D., represents that all of the following statements are true:

That on or about July 29, 1987, I was licensed to practice as a physician in the State of New York, and issued License No. 171247 by the New York State Education Department.

My current address is 4080 Delaware Avenue, Tonawanda, New York 14150, 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 (Board) has charged me with five 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 plead no contest to paragraphs G.1, G.2, G.4, and G. 5 of the fifth specification, in full satisfaction of the charges against me, and agree to the following penalty:

1. A limitation on my medical license pursuant to Public Health Law § 230-a (3) prohibiting the prescribing of opiates, synthetic opioids and their analogues (hereafter opiates) to any patient for more than a 90-day period (hereafter "the 90-day period"). The 90-day period commences on the day a patient first presents to me or to a medical practice with which I am affiliated, with a condition for which

accepted standards of care require the prescription of opiates. The 90-day period ends and the prohibition commences with the resolution of the condition requiring opiates, or on the day responsibility for prescribing opiates for the patient's condition is transferred to another physician, or on the 90<sup>th</sup> day from the date the patient first presented to me or to a medical practice with which I am affiliated, with the condition requiring opiates, whichever occurs first. In no event will I issue or authorize a prescription for any patient which provides opiates to that patient after the 90<sup>th</sup> day from the date the patient first presented to me or to a medical practice with which I am affiliated, with that condition.

2. A limitation on my medical license pursuant to Public Health Law § 230-a(3) permitting me to prescribe benzodiazepines to a patient for a 90-day period when medically indicated. After the 90-day period, I may prescribe benzodiazepines to a patient only after consulting in writing with a board-certified psychiatrist and obtaining the psychiatrist's written approval for the following: the continuation of the patient's treatment with benzodiazepines, the benzodiazepine to be used in treatment, and the treatment dose. I shall inform the board-certified psychiatrist in writing of, among other things, the patient's medical history and all other medications, with dosages, prescribed to the patient. Thereafter, I shall obtain the board-certified psychiatrist's written approval for the patient's continued treatment with benzodiazepines at a stated dose prior to the addition of any controlled substance to the patient's treatment, prior to an increase in the dosage of any controlled substance prescribed to the patient, and at least twice a year. When requested by the Office of Professional Medical Conduct, I shall provide evidence of all written communication between myself and the board-certified psychiatrist

for any patient whose care by me is subject to the terms of this paragraph. Such evidence will be provided by me in a form directed by the Office of Professional Medical Conduct. The 90-day period for purposes of this paragraph shall be determined by the same calculation used to determine the 90-day period for prescribing opiates in paragraph 1, above.

3. A censure and reprimand of my medical license with four years of probation in accordance with the terms set forth in Exhibit B hereto.

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

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee 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 Consent 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 Consent 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 Consent Order shall constitute misconduct as defined by N.Y. Educ. 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 N.Y. Pub. 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 Consent 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 Consent 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 Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC 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 I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent 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 6/16/11

REDACTED

WILLIAM STEPHAN, M.D.  
RESPONDENT

**ORIGINAL**

# ORIGINAL

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

DATE: 6/17/11

REDACTED

~~KATHLEEN M. SWEET, ESQ.~~  
Gibson, McAskill & Crosby, LLP  
Attorneys for Respondent

DATE: 6/20/11

REDACTED

~~TIMOTHY J. MAHAR~~  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 6/27/11

REDACTED

~~KEITH W. SERVIS~~  
Director  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
WILLIAM STEPHAN, M.D.

William Stephan, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 29, 1987, by the issuance of license number 171247 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A at his offices during the period from October 16, 2007 to March 16, 2009 for complaints of pain, depression, and /or anxiety, among other things. Respondent's medical care of Patient A deviated from accepted standards of care as follows:
1. Respondent failed to adequately evaluate Patient A prior to prescribing controlled substances.
  2. Respondent failed to properly prescribed controlled substances to Patient A.
  3. Respondent failed to maintain an adequate medical record for Patient A.
- B. Respondent provided medical care to Patient B at his office during the period from July 16, 2007 to June 19, 2009 for chronic neck and back pain among other conditions. Respondent's medical care of Patient B deviated from accepted standards of care as follows:
1. Respondent failed to properly prescribe controlled substances to Patient B.

2. Respondent on one or more occasions failed to adequately monitor Patient B's use of controlled substances.
  3. Respondent failed to maintain an adequate medical record for Patient B.
- C. Respondent provided medical care to Patient C at his offices during the period from January 31, 2006 through July 30, 2009 for complaints of neck and back pain, GERD and hyperlipidemia, among other conditions. Respondent's medical care of Patient C deviated from accepted standards of care as follows:
1. Respondent failed to properly prescribe controlled substances to Patient C.
  2. Respondent failed to properly prescribe medications with sedating effects to Patient C.
  3. Respondent failed on one or more occasions to obtain an adequate medical history from Patient C.
- D. Respondent provided medical care to Patient D from September 16, 1996 through October 18, 2008 at his offices for knee pain, shoulder pain, sleep apnea, and anxiety, among other conditions. Respondent's medical care of Patient D deviated from accepted standards of care as follows:
1. Respondent failed to properly prescribe controlled substances to Patient D.
  2. Respondent failed to properly prescribe medications having sedating effects to Patient D.
  3. Respondent failed to properly prescribe medications to promote alertness in Patient D.

E. Respondent provided medical care to Patient E at his office during the period from January 17, 2006 through May 15, 2009 for anemia, diabetes and abnormal renal function testing, among other conditions. Respondent's medical care of Patient E deviated from accepted standards of care as follows:

1. Respondent failed to properly prescribe controlled substances to Patient E.
2. Respondent failed to properly order blood testing for Patient E.
3. Respondent failed to properly prescribe medications having sedating effects to Patient E.

F. Respondent provided medical care to Patient F during the period from January 27, 2004 through May 27, 2009 at his offices for thyroid replacement, fatigue, vaginal bleeding and suicidal statements, among other conditions. Respondent's care of Patient F deviated from accepted standards of care as follows:

1. Respondent failed to properly prescribe controlled substances to Patient F.
2. Respondent failed to properly prescribe medications having sedating effects to Patient F.
3. Respondent failed to properly prescribe medications to promote alertness in Patient F.
4. Respondent on one or more occasions failed to appropriately treat Patient F with Ritalin.

- G. Respondent provided medical care to Patient G during the period including October 20, 1993 through May 12, 2009 at his offices for hypertension, pain management and/or constipation, among other conditions. Respondent's care of Patient G deviated from accepted standards of care as follows:
1. Respondent failed to properly prescribe controlled substances to Patient G.
  2. Respondent failed to properly prescribe medications to promote alertness to Patient G.
  3. Respondent on one or more occasions failed to adequately evaluate Patient G before renewing his pain medication.
  4. Respondent failed to obtain an adequate medical history from Patient G.
  5. Respondent failed to perform an adequate physical examination on Patient G.
- H. Respondent provided medical care to Patient H at his offices during the period from April 2005 to June 2007 for complaints of back pain and colchicine toxicity, among other conditions. Respondent's medical care of Patient H deviated from accepted standards of care as follows:
1. Respondent failed on one or more occasions to adequately evaluate Patient H.
  2. Respondent failed on one or more occasions to adequately treat Patient H.
  3. Respondent failed on one or more occasions to obtain an adequate informed consent from Patient H.
  4. Respondent failed to adequately document his treatment of Patient H with colchicine in the medical record.

## **SPECIFICATION OF CHARGES**

### **FIRST THROUGH FOURTH SPECIFICATIONS**

#### **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:

1. The facts as set forth in Factual Allegations: B and B.1 and/or B and B.2.
2. The facts as set forth in Factual Allegations: D and D.1, and/or D and D.2 and/or D and D.3.
3. The facts as set forth in Factual Allegations: F and F.1, F and F.2, F and F.3.
4. The facts as set forth in Factual Allegations: G and G.1, G and G.2,

### **FIFTH 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:

5. The facts alleged in the following Allegations: A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, D and D.3, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, F and F.3, F and F.4, G and G.1, G and G.2, G and G.3, G and G.4, G and

G.5, H and H.1, H and H.2, H and H.3 and/or H and H.4.

DATE: June *20*, 2011  
Albany, New York

REDACTED

PETER D. VAN BUREN  
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 N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. 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 this 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, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
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 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 30 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 shall 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 as 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, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
9. 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.
10. Respondent shall enroll in and complete a continuing education program in the areas of pain management, patient evaluation and risk management for a minimum of 50 credit hours each year of the probation above any minimum credits required each year by Respondent's specialty. This continuing education program is subject to the Director of OPMC's prior written approval.

#### PRACTICE MONITOR

11. Within thirty days of the Consent Order's effective date, 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. Prior to OPMC's approval of a practice monitor, Respondent shall provide affidavits from Respondent and the proposed practice monitor stating under oath that there are no professional or social relationships between Respondent and the proposed monitor or any other circumstance which would inhibit the proposed monitor from rendering an objective and impartial assessment of the quality of Respondent's medical care to patients. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
  - 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. Respondent shall maintain a log for each patient of all controlled substances prescribed to that patient in a form approved by OPMC and shall make the log available to the practice monitor at each visit by the monitor to Respondent's practice. Upon request, Respondent shall make the log available to OPMC. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at a frequency determined by the Director of OPMC and shall examine a selection of records maintained by Respondent, including patient records, prescribing information and office records. The number of records reviewed by the practice monitor during a particular visit will be determined by the Director of OPMC. 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.
12. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a 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.