



***New York State Board for Professional Medical Conduct***

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

Kendrick A. Sears, M.D.  
Chair

Keith W. Servis, Director  
Office of Professional Medical Conduct

*Public*

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

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

February 13, 2007

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Richard S. Aguirre, M.D.  
6641 Kellerman Road  
Conesus, NY 14435

RE: License No. 213119

Dear Dr. Aguirre:

Enclosed is a copy of Order #BPMC 07-33 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect February 20, 2007.

**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:**

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ansel R. Marks". The signature is fluid and cursive, with a large initial "A" and "M".

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

cc: Anna E. Lynch, Esq.  
Underberg & Kessler, LLP  
300 Bausch & Lomb Place  
Rochester, NY 14604

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

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IN THE MATTER

OF

RICHARD S. AGUIRRE, M.D.

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**CONSENT  
ORDER**

Upon the application of **RICHARD S. AGUIRRE, M.D.** (Respondent), in the attached Consent Agreement and Order, which is made a part of this Consent Order it is

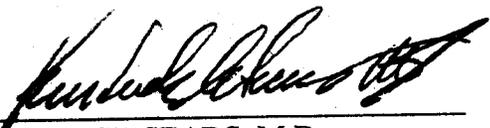
ORDERED, that the Consent Agreement, and its terms, are adopted and it is further

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.

DATED: 2-13-07



KENDRICK 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  
RICHARD S. AGUIRRE, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

**RICHARD S. AGUIRRE, M.D., representing that all of the following statements are true, deposes and says:**

**That on or about February 11, 1999, I was licensed to practice as a physician in the State of New York, and issued License No. 213119 by the New York State Education Department.**

**My current address is 6641 Kellerman Road, Conesus, New York 14435, 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 Eight 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 admit guilt of the First Specification concerning paragraphs A, B, C, and D of the Factual Allegations in full satisfaction of the charges against me, and agree to the following penalty:**

- a censure and reprimand;**
- a \$5,000 fine payable in full within 30 days of the effective date of this**

**Order, payments must be submitted to:**

Bureau of Accounts Management  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 1245  
Albany, New York 12237

; and

- I shall be on probation for a period of three years during which time I shall fully comply with the Terms of Probation set forth in Exhibit "B".

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 30 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: 1/29/07

  
RICHARD S. AGUIRRE, M.D.  
RESPONDENT

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

DATE: 1/29/07

  
ANNA E. LYNCH  
Attorney for Respondent

DATE: 1/30/07

  
KEVIN P. DONOVAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 2/8/07

  
Keith W. Servis  
Director  
Office of Professional Medical Conduct

EXHIBIT "A"

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

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IN THE MATTER : STATEMENT  
OF : OF  
RICHARD S. AGUIRRE, M.D. : CHARGES

-----X

RICHARD S. AGUIRRE, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 11, 1999, by the issuance of license number 213119 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A (patients are identified in the attached Appendix) during a pregnancy with an expected date of delivery (EDD) of February 13, 2004, at his office at Tri-County Family Medicine in Lakeville, New York. Respondent did not meet acceptable standards of care in that Respondent failed to perform a timely and adequate history and physical examination of Patient A during the pregnancy or note his assessment or plan.

B. Respondent treated Patient B during a pregnancy with an EDD of April 11, 2004. Respondent did not meet acceptable standards of care in that:

1. Respondent did not perform a timely pap smear, physical examination, pelvic examination, or breast examination.
2. Respondent failed to inform or cause Patient B to be informed of the laboratory reported that she was Rh negative and rubella non-immune.

C. Respondent treated Patients C, D, and E at his office. Respondent did not meet acceptable standards of care in that Respondent signed and dated obstetrical records indicating that he had performed a physical examination, pelvic examination and breast examination on dates when either no such examinations had been done, or they were not done by him.

D. Respondent treated Patient F from around December 6, 2001, until around October 7, 2003, at his office. Respondent did not meet acceptable standards of care in that:

1. Respondent failed to take adequate steps to evaluate or document the causes of the patient's pain.
2. Respondent prescribed controlled substances to Patient F without adequate assessment, indication, in inappropriate amounts and/or frequency.

E. Respondent treated Patient G from around August 22, 2002, until at least October 2003, at his office. Respondent did not meet acceptable standards of care in that:

1. Respondent failed to take adequate steps to evaluate or document the causes of the patient's pain.
2. Respondent prescribed controlled substances to Patient G without adequate assessment, indication, in inappropriate amounts and/or frequency.
3. Respondent failed to adequately address indications of drug seeking behavior by the patient.

F. Respondent treated Patients H, I, J, K, L, and M from around 2002, until at least 2003, at his office. Respondent did not meet acceptable standards of care in that Respondent did not provide fully accurate information to the parents of the patients concerning the need for re-vaccination after Tri-County Family Medicine learned that certain vaccines had not been stored at the proper temperatures at his office.

## SPECIFICATIONS OF MISCONDUCT

### FIRST SPECIFICATION

#### PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession with negligence on more than one occasion within the meaning of New York Educ. Law Section 6530 (3) in that Petitioner charges two or more of the following:

1. The facts of paragraphs A, B and B.1, B and B.2, C, D and D.1, D and D.2, E and E.1, E and E.2, E and E.3 and/or F.

### SECOND SPECIFICATION

#### PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing with incompetence on more than one occasion within the meaning of New York Educ. Law Section 6530(5) in that the Petitioner charges two or more of the following:

2. The facts of paragraphs A, B and B.1, B and B.2, C, D and D.1, D and D.2, E and E.1, E and E.2, E and E.3 and/or F.

### THIRD AND FOURTH SPECIFICATIONS

#### PRACTICING WITH GROSS NEGLIGENCE

The Respondent is charged with practicing the profession with gross negligence on a particular occasion within the meaning of New York Educ. Law Section 6530(4) in that Petitioner charges:

3. The facts of paragraphs D and D.1 and/or D and D.2.
4. The facts of paragraphs E and E.1, E and E.2 and/or E and E.3.

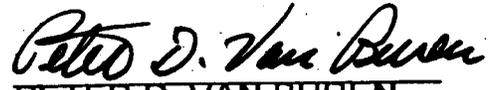
### FIFTH THROUGH EIGHTH SPECIFICATIONS

#### 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 in that Petitioner charges:

5. The facts of paragraph A.
  6. The facts of paragraph C.
  7. The facts of paragraphs D and D.1.
  8. The facts of paragraphs E and E.1.
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Dated: January 30, 2007  
Albany, New York

  
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. Payment of the fine imposed is also a term of probation. The fine is payable in full within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 1245  
Albany, New York 12237
6. Respondent's failure to pay any fine or 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].
7. 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.

8. 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.
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. 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.
11. 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.