



***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.  
*Commissioner*  
NYS Department of Health

Dennis P. Whalen  
*Executive Deputy Commissioner*  
NYS Department of Health

Dennis J. Graziano, Director  
*Office of Professional Medical Conduct*

**PUBLIC**

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

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

January 29, 2004

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

Ara Garibian, M.D.  
a/k/a Alex Garry, M.D.  
P.O. Box 7430  
Burbank, CA 91510

Re: Resident

Dear Dr. Garibian:

Enclosed please find Order #BPMC 04-16 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect February 5, 2004.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order 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: Barry Zone, Esq.  
Gersten, Savage & Kaplowitz, LLP  
101 East 52nd Street, 9th Floor  
New York, NY 10022

**IN THE MATTER  
OF  
ARA GARIBIAN, M.D. a/k/a ALEX GARRY, M.D.**

**CONSENT  
ORDER**

BPMC No. 04-16

Upon the proposed agreement of ARA GARIBIAN, M.D. (Respondent) for a Consent Order, in the attached application, which is a part of this Order, it is agreed to and

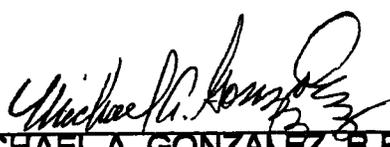
**ORDERED**, that the application and its provisions are hereby adopted and so **ORDERED**, and it is further

**ORDERED**, that this Order shall be effective upon issuance by the Board, either:

- by mailing of a copy of the Consent Order to Respondent at the designated address by first class mail, or to Respondent's attorney by certified mail, or
- upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

**SO ORDERED.**

DATED: 1/28/04

  
MICHAEL A. GONZALEZ, R.P.A.  
Vice Chair  
State Board for Professional Medical Conduct

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

IN THE MATTER  
OF  
ARA GARIBIAN, M.D. a/k/a ALEX GARRY, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

STATE OF CALIFORNIA )  
COUNTY OF ) ss.:

Ara Garibian, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That I have been a "licensee," as that term is defined in N.Y. Public Health Law §230(7), at times on and after July 1994. I do not hold and have not held a license to practice medicine in New York State issued by the New York State Education Department.

My current address is 9432 Via Salerno, Burbank, CA 91504-1222 (provide new current address, if necessary: P.O. BOX 7430, BURBANK CA 91510, California), and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

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

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

I admit guilt to the Fourth Specification to the extent that it cites Paragraphs A, A2, A2a, A2c, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Public Health Law §230-a(6), a limitation shall be placed precluding the issuance of any further license or

registration to me to practice medicine in New York State until the State Board for Professional Medical Conduct shall issue a Modification Order staying such limitation. I understand and agree: (1) that upon compliance with all conditions of this Order, I may petition the State Board for Professional Medical Conduct for a Modification Order staying the limitation of my license and that issuance of such a Modification Order is a condition precedent to my application for licensure; (2) that any Modification Order the Board may issue, in the exercise of its reasonable discretion, may include limitations, terms of probation, or further conditions on my practice; (3) 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"; and (4) that the Committee's exercise of discretion shall not be reviewable by the Administrative Review Board.

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

That until and unless I am granted a license to practice medicine in the State of New York, I shall not engage in any practice of medicine in the State of New York, whether as a licensee, resident, holder of a permit, or exempt person, beginning upon the effective date of the Consent Order; and

That I shall fully cooperate with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters concerning me. I shall respond in a timely manner to every OPMC request for written periodic verification of my compliance with the terms of this Order. I shall meet with a person designated by the Director of OPMC, as directed. I shall respond promptly and provide all documents and information within my control, as directed by OPMC. This condition shall take effect upon the effective date of the Consent Order and will continue indefinitely.

I stipulate that my failure to comply with these conditions shall constitute misconduct as defined by New York State Education Law §6530(29) (McKinney Supp 2004).

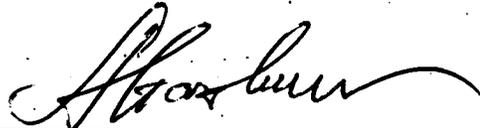
I agree that if I am charged with professional misconduct in the future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, if the Board declines to grant this Application, nothing in this agreement shall bind me or shall be construed as an admission of any act of alleged misconduct, this Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and the Board's denial shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

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

I make this Application of my own free will not under duress, compulsion or restraint of any kind. In consideration of the value to me of the Board's acceptance of this Application, allowing me to resolve this matter without the 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, and ask the Board to grant this Application.



ARA GARIBIAN, M.D.  
RESPONDENT

The undersigned agree to Respondent's attached application and to the proposed penalty based on its terms and conditions.

DATE: 1/19/04

  
BARRY ZONE, ESQ.  
Attorney for Respondent

DATE: 1-20-04

  
ANN GAYLE  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 1/27/04

  
DENNIS GRAZIANO  
Director  
Office of Professional Medical Conduct

**NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT****IN THE MATTER****OF****ARA GARIBIAN, M.D. a/k/a ALEX GARRY, M.D.****STATEMENT****OF****CHARGES**

ARA GARIBIAN, M.D., a/k/a ALEX GARRY, M.D., the Respondent, was a "licensee", as that term is defined in N.Y. Public Health Law 230(7), at times on and after July 1994, and does not hold a license to practice medicine in New York State issued by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. During the period July 1998 through November 1998, Respondent practiced medicine as a resident in the Department of Anesthesiology residency program at SUNY Health Science Center, Brooklyn, New York.
1. On or about October 21, 1998, Respondent inappropriately diverted Fentanyl from a patient's intravenous line for his own personal use. On or about November 5, 1998, Respondent resigned from the residency program after at least one urine sample obtained from him on and shortly after October 21, 1998, tested positive for Fentanyl.
  2. On or about February 7, 1998, Respondent filed a "Universal Application for Residency" with SUNY Health Science Center, Department of Anesthesiology, Brooklyn, New York, in which he knowingly, and with intent to deceive, failed to disclose that he had previously:
    - a. practiced medicine as a resident in the anesthesiology training program at Stanford University

Medical Center, Palo Alto, California from approximately July 1995 to July 1996;

- b. resigned from the anesthesiology training program at Stanford University Medical Center, Palo Alto, California on or about July 25, 1996, after inappropriately diverting Demerol from the hospital pharmacy for his own personal use, and in the face of a hospital investigation showing this diversion;
- c. practiced medicine as a resident in the Department of Anesthesiology residency program at Tulane University School of Medicine, New Orleans, Louisiana from approximately July 1997 to September 1997; and
- d. been terminated from the anesthesiology residency program at Tulane University School of Medicine, New Orleans, Louisiana on or about November 1, 1997, after inappropriately diverting Demerol from an operating room and the post - anesthesia care unit for his own use while in the residency program in 1997, and in the face of a hospital investigation in which he admitted taking the Demerol from the operating room and the post anesthesia care unit for his own use.

B. On or about November 21, 1996, Respondent filed a "Universal Application for Residency" with Tulane University School of Medicine, Department of Anesthesiology, New Orleans, Louisiana, in which he knowingly, and with intent to deceive, failed to disclose that he had:

1. practiced medicine as a resident in the anesthesiology training

- program at Stanford University Medical Center, Palo Alto, California from approximately July 1995 to July 1996; and
2. previously resigned from the anesthesiology residency program at Stanford University Medical Center, Palo Alto, California on or about July 25, 1993, after inappropriately diverting Demerol from the hospital pharmacy for his own personal use, and in the face of a hospital investigation showing this diversion,
- C. During the period July 1994 through June 1995, Respondent practiced medicine as an intern at New York Medical College/Westchester County Medical Center, Valhalla, New York.
1. On or about December 14, 1994, Respondent inappropriately diverted –or attempted to divert– Morphine from a patient's intravenous line for his own personal use.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **BEING AN HABITUAL ABUSER OR USER OR HAVING A PSYCHIATRIC CONDITION WHICH IMPAIRS THE ABILITY TO PRACTICE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8) by being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice as alleged in the facts of the following:

1. Paragraph A, A.1, A.2, A.2.a, A.2.b, A.2.c, A.2.d, B, B.1, B.2, C, and/or C.1.

**SECOND SPECIFICATION**  
**PRACTICING WHILE IMPAIRED**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(7) by practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability as alleged in the facts of the following:

2. Paragraph A, A.1, C, and/or C.1.

**THIRD SPECIFICATION**  
**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:

3. Paragraph A, A.1, A.2, A.2.a, A.2.b, A.2.c, A.2.d, B, B.1, B.2, C, and/or C.1.

**FOURTH SPECIFICATION**  
**MORAL UNFITNESS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

4. Paragraph A, A.1, A.2, A.2.a, A.2.b, A.2.c, A.2.d, B, B.1, B.2, C, and/or C.1.

**FIFTH SPECIFICATION**  
**VIOLATION OF PUBLIC HEALTH LAW SECTION 2805-K**

Respondent is charged with committing professional misconduct as defined in

N.Y. Educ. Law §6530(14) by violating the provisions of Public Health Law §2805-k (failing to provide complete and accurate information on an application for hospital employment), as alleged in the facts of:

5. Paragraph A, A.2, A.2.a, A.2.b, A.2.c, and/or A.2.d.

**DATED:** November 3, 2003  
New York, New York

A handwritten signature in black ink, appearing to read "Roy Nemerson", written over a horizontal line.

**ROY NEMERSON**  
Deputy Counsel  
Bureau of Professional Medical Conduct

## **EXHIBIT "B"**

1. The indefinite limitation on issuance of a medical license to Respondent shall be modified only upon a showing by Respondent to the satisfaction of a Committee on Professional Conduct of the State Board for Professional Medical Conduct (henceforth "Committee"), and upon the Committee's determination, that: he has successfully complied with or completed a course of therapy and ongoing evaluation and he is both fit and clinically competent to practice as a Physician.

2. Upon Respondent's written request, no sooner than one year from the effective date of this Order, a Committee shall meet to hear and evaluate Respondent's showing, as referred to in paragraph 1 above, in support of a Modification Order. The Board will make reasonable attempts to convene a Committee within 120 days after Respondent's request, which shall not be perfected until the Director of the Office of Professional Medical Conduct receives all the documents Respondent is required to provide to satisfy the Conditions imposed upon him and as further set forth in paragraph 3 below. The procedural nature of said proceeding shall be determined by the State Board for Professional Medical Conduct, within the discretion of the Director of the Office of Professional Medical Conduct upon consultation with Counsel, Bureau of Professional Medical Conduct. 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 that do or may relate to the advisability of terminating or modifying the prohibition against Respondent's practice of medicine in New York State. 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 that the Director of the Office of Professional Medical Conduct or Counsel, Bureau of Professional Medical Conduct deems appropriate.

3. At the time that Respondent requests that a Committee meeting be scheduled pursuant to paragraph 2, he shall provide the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299, with the following:

- a. The signed acknowledgment from the supervising physician referred to in paragraph 5c.
- b. The signed acknowledgment from the health care professional referred to in paragraph 5d.
- c. Certified true and complete copies of records of all evaluation and treatment, whether that evaluation and treatment occurred prior to or during the time this limitation is in effect. These records shall include documentation of the results of any and all tests conducted to evaluate Respondent's fitness and his clinical competence to practice medicine. Such records shall include documentation of his participation in the program(s) of the Committee for Physicians' Health of the New York State Medical Society, or other equivalent program(s).
- d. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
- e. An independent current psychiatric evaluation by a board certified psychiatrist. Also, upon request of the Director of OPMC, a current in-depth chemical dependency evaluation by a health care professional in a licensed facility.
- f. At the discretion of the Director of OPMC, a report of a complete clinical competency assessment, to be performed by a program proposed by Respondent and subject to the prior written approval of the Director of OPMC.
- g. Respondent's attendance at, participation in, and cooperation with an interview conducted by personnel of OPMC, upon the request of the Director thereof.

Provision of the aforesaid documents will not alone constitute a showing that Respondent is no longer incapacitated for active practice as a Physician.

4. At the proceeding referred to in paragraph 2, Respondent shall provide the committee, at a minimum, with the following:
  - a. Certified true and complete records of all psychiatric, psychological, and/or any other mental health treatment, evaluation, and/or testing, whether in an out-patient, in-patient, office or consultation setting.

- b. Evidence of compliance with the terms of a continuing after-care out-patient treatment plan, if any.
- c. Evidence that Respondent has maintained adequate knowledge and competence to practice as a physician. Such evidence shall include documentation of continuing medical education and, if so requested by the Director of OPMC, a report of an independent evaluation of Respondent's medical knowledge and competence.

Submission of the aforesaid evidence shall not alone constitute a showing that Respondent is both fit and clinically competent for active practice as a Physician.

5. If the Chair of the Committee issues an order (Order) finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice medicine, therefore modifying the limitation on issuance of a medical license to Respondent, the Order shall further impose a period of probation, pursuant to New York Public Health Law §230-a, during which his practice as a Physician shall be subject to conditions imposed. Respondent's practice shall be subject to such conditions for a period of not less than five years. The minimum conditions shall include:

- a. Respondent shall be required to comply with the terms of a continuing after-care treatment plan, if any.
- b. At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board certified psychiatrist or other licensed mental health practitioner designated by the Director. Said practitioner shall report to the Director regarding Respondent's condition and his fitness or incapacity to practice as a Physician.
- c. Respondent shall be supervised in his medical practice by a licensed physician, proposed by him and approved in writing by the Director of OPMC, in accordance with the conditions contained in or attached to the Order. Said supervising physician shall be familiar with Respondent's treatment history and with the Order and its conditions. Said supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. Said supervising physician shall be in a position regularly to observe and assess Respondent's medical practice. Said supervising physician shall acknowledge

willingness to comply with the supervision by executing the acknowledgement provided by OPMC.

- i. Said supervising physician shall submit to OPMC quarterly reports regarding the quality of Respondent's medical practice, any unexplained absences from work and certifying compliance or detailing failure to comply with each condition imposed.
- ii. Said supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.

c. Respondent shall continue in treatment with a health care professional, proposed by him and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.

- i. Respondent's treating health care professional or program shall submit to OPMC quarterly reports certifying that Respondent is complying with the treatment.
- ii. Said treating health care professional shall report to OPMC immediately if Respondent is noncompliant with his treatment plan or if he demonstrates any significant pattern of absences.
- iii. Said treating health care professional shall acknowledge willingness to comply with the above-mentioned reporting by executing the acknowledgment provided by OPMC.

6. The terms set out in paragraph 5 shall be the minimum conditions related to his fitness to practice that shall be imposed on Respondent's practice if the Education Department, in the future, issues a medical license to Respondent. The

Committee may add additional relevant terms to the Modification Order beyond the minimum terms set forth above, and Respondent agrees that he shall be responsible for the costs of complying with all the conditions imposed by the Modification Order. Respondent's failure to comply with the conditions imposed upon his practice by the Modification Order may result in disciplinary action being brought against him, charging professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law Section 6530(29) (McKinney Supp. 2004). That section defines professional misconduct to include "violating any... condition... imposed on the licensee pursuant to section two hundred thirty of the public health law."

7. Upon any denial of Respondent's application for a Modification Order, Respondent shall not again request convening of a Committee until a minimum period of nine months has elapsed since such denial.

8. In addition to the terms set out in paragraph 5 and any other terms imposed by the Committee in the Modification Order, Respondent shall also be subject to the following conditions:

- 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 submit written notification of all sites of employment and/or medical practice to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice shall include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and notification of any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
- c. 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. He shall personally meet with a person designated by the Director of OPMC, as requested by the Director.

- d. 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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
- e. Any period of conditions shall be tolled during periods in which Respondent is not engaged in the active practice as a Physician in New York State. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in or intends to leave the active practice as a Physician in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of conditions shall resume and any conditions that were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State. The tolling provision set forth in this paragraph may be waived by the Director of the OPMC, in the Director's discretion.
- f. 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 his staff at practice locations or OPMC offices.
- g. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
- h. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.