

IN THE MATTER
OF
LAXMIKANT BHOIWALA, M.D.

CONSENT
ORDER

BPMC No. #08-250

Upon the application of (Respondent) Laxmikant Bhoiwala, 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.

Redacted Signature

DATE: 12-23-2008

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

IN THE MATTER
OF
LAXMIKANT BHOIWALA, M.D.

CONSENT
AGREEMENT
AND
ORDER

Laxmikant Bhoiwala, M.D., represents that all of the following statements are true:

That on or about November 8, 1994, I was licensed to practice as a physician in the State of New York, and issued License No. 197789 by the New York State Education Department.

My current address is 597 Columbia Turnpike, East Greenbush, New York, 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 seventeen 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 to the Thirteenth Specification as it applies to D and D.1, and D and D. 2, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.

Pursuant to Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of two years, subject to the terms

set forth in attached Exhibit "B."

Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of \$10,000, to be paid in two installments, as follows:

1. \$5,000 to be paid no later than 6 months after the effective date of this Order.
2. \$5,000 to be paid no later than 12 months after 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 1717
Albany, New York 12237

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

That Respondent, at all times when he is practicing medicine in New York State, shall examine and/or treat female patients only in the presence of a chaperone, as set forth in attached Exhibit C.

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 12/10/08

Redacted Signature

LAXMIKANT BHOIWALA, M.D.
RESPONDENT

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

DATE: 12/14/08

Redacted Signature

JOHN T. MALONEY, ESQ.
Attorney for Respondent

DATE: 12/11/08

Redacted Signature

VALERIE B. DONOVAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 12/19/08

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

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

IN THE MATTER
OF
LAXMIKANT BHOIWALA, M.D.

STATEMENT
OF
CHARGES

LAXMIKANT BHOIWALA, M.D., Respondent, was authorized to practice medicine in New York State on November 8, 1994, by the issuance of license number 197789 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From in or around 1998 through around May 2003, Respondent provided medical treatment at Urgent & Primary Care, 598 Columbia Turnpike, East Greenbush, New York (hereinafter "office"), to Patient A, a female born in 1981 (patients are identified in Appendix A, attached hereto). During an office visit on or around May 6, 2003, Respondent's care and treatment of Patient A failed to meet acceptable standards of care in that:
1. Respondent hugged patient A as they walked down a hallway toward an examination room and/or stated to Patient A that she "looked really good," or words to that effect.
 2. Respondent hugged Patient A as they entered the examination room.
 3. When Patient A requested a band-aid, Respondent hugged Patient A and/or stated to Patient A that she "did not need one [a band-aid] because she was already beautiful," or words to that effect.
 4. Respondent placed his arms under Patient A's arms and as she tried to move away Respondent kissed Patient A on her lips without her consent.

- B. Respondent provided medical treatment at his office to Patient/Employee B, a female born in 1982, from in or around 1999 through around August 2003. In or around November 2002, Patient/Employee B came into the office to pick up her final paycheck and was directed to an examination room; while in this examination room, Respondent asked Patient/Employee B to take his blood pressure; Patient/Employee B took his blood pressure, and Respondent then held her waist, addressed her by a possessive diminutive of her name and kissed her cheek after she turned her head away from him; Respondent then kissed Patient/Employee B on the lips without her consent; Respondent then grabbed Patient/Employee B's shoulder and waist as she attempted to leave the room, rubbed her back and addressed her by a possessive diminutive of her name.
- C. On or about April 6, 2005, Respondent entered into Consent Agreement and Order #BPMC 05-61 with the New York State Board for Professional Medical Conduct, in which Respondent agreed to a Censure and Reprimand and three years probation. The Consent Agreement and Order required that Respondent conform to professional standards of conduct during the probation period, and Respondent stipulated in the Consent Agreement that his "failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29)."
- D. On or around May 29, 2006, Respondent provided medical treatment at his office to Patient C, a female born in 1958. Respondent's care and treatment of Patient C failed to meet acceptable standards of care in that:
1. Respondent inappropriately and/or without Patient C's consent, allowed a ~~male and a female who were not employees or health care professionals, who were unknown by Patient C and/or who were not introduced to Patient C,~~ to be in the examination room while he examined Patient C's torso.
 2. Respondent dispensed pills to Patient C in an unlabelled envelope.

SPECIFICATION OF CHARGES

FIRST THROUGH FIFTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with professional misconduct by reason of his committing conduct in the practice of medicine that evidences moral unfitness to practice medicine in violation of New York Education Law §6530(20), in that Petitioner charges:

1. The facts in paragraphs A and A.1.
2. The facts in paragraphs A and A.2.
3. The facts in paragraphs A and A.3.
4. The facts in paragraphs A and A.4.
5. The facts in paragraph B.

SIXTH THROUGH TENTH SPECIFICATIONS

HARASSING OR ABUSING A PATIENT PHYSICALLY

AND/OR VERBALLY

Respondent is charged with professional misconduct by reason of his willfully harassing, abusing, or intimidating a patient either physically or verbally, in violation of New York Education Law §6530(31), in that Petitioner charges:

6. The facts in paragraphs A and A.1.
7. The facts in paragraphs A and A.2.
8. The facts in paragraphs A and A.3.
9. The facts in paragraphs A and A.4.
10. The facts in paragraph B.

ELEVENTH SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in New York

Education Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the following:

11. The facts in paragraphs D and D.1.

TWELFTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(6) by practicing the profession of medicine with gross incompetence as alleged in the following:

12. The facts in paragraphs D and D.1.

THIRTEENTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in New York Education 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:

13. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, B, D and D.1 and/or D and D.2.

FOURTEENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in New York Education 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:

14. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, B, D and D.1 and/or D and D.2.

FIFTEENTH SPECIFICATION

REVEALING PERSONALLY IDENTIFIABLE INFORMATION
WITHOUT PRIOR PATIENT CONSENT

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(23) by revealing personally identifiable information obtained in a professional capacity without the prior consent of the patient, as alleged in the following:

15. The facts in paragraphs D and D.1.

SIXTEENTH AND SEVENTEENTH SPECIFICATIONS
VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION

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

16. The facts in paragraphs C, and D and D.1
17. The facts in paragraphs C, and D and D.2.

DATED: *November 4, 2008*
Albany, New York

Redacted Signature

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; all current and past affiliations and/or privileges, with hospitals, institutions, facilities, medical practices, managed care organizations, and/or applications for such affiliations and/or privileges; 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 continuing education programs in the areas of (1) appropriate prescribing and (2) physician/patient boundaries. These continuing education programs are subject to the Director of OPMC's prior written approval and shall be completed within the first 120 days of the probation period.
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.

EXHIBIT C
CHAPERONE

1. Respondent shall, in the course of practicing medicine in New York State, examine and/ treat any female patient only in the presence of a chaperone. The chaperone shall be a licensed or registered health care professional or other health care worker, shall not be a family member, personal friend, or be in a professional relationship with Respondent which could pose a conflict with the chaperone's responsibilities. The chaperone shall be proposed by Respondent and subject to the written approval of the Director of OPMC.
2. Prior to the approval of any individual as chaperone, Respondent shall cause the proposed chaperone to execute and submit to the Director of OPMC an acknowledgment of the chaperone's agreement to undertake all of the responsibilities of the role of chaperone. Said acknowledgment shall be made upon a form provided by and acceptable to the Director. Respondent shall provide the chaperone with a copy of the Order and all of its attachments and shall, without fail, cause the approved chaperone to:
 - a. Report quarterly to OPMC regarding the chaperoning of Respondent's practice.
 - b. Report within 24 hours any failure of Respondent to comply with the Order, including, but not limited to, any failure by Respondent to have the chaperone present when required, any sexually suggestive or otherwise inappropriate comments by Respondent to any patient, and any actions of a sexual nature by Respondent in the presence of any patient.
 - c. Confirm the chaperone's presence at each and every examination and treatment of a female patient by Respondent, by placing the chaperone's name, title and date in the patient record for each and every visit, and by maintaining a separate log, kept in the chaperone's own possession, listing the patient name and date of visit for each and every patient visit chaperoned.
 - d. Provide copies of the log described in paragraph c, above, to OPMC at least quarterly and also immediately upon the Director's request.
3. The requirement of a chaperone shall be a permanent condition on Respondent's license to practice medicine in New York State.