



***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.  
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NYS Department of Health*

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

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

*Public*

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

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

July 14, 2005

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

Bryan Kurtz, M.D.  
35 Friar Tuck Way  
Saratoga, NY 12866

Re: License No. 195313

Dear Dr. Kurtz:

Enclosed is a copy of Order #BPMC 05-143 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect July 21, 2005.

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: Rudolph C. Gabriel, Esq.  
Kern, Augustine, Conroy & Schoppmann, P.C.  
420 Lakeville Road  
Lake Success, NY 11042

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

IN THE MATTER  
OF  
BRYAN KURTZ, M.D.

CONSENT  
ORDER

BPMC No. 05-143

Upon the application of (Respondent) Bryan Kurtz, 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.

DATED: 7-13-2005

  
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  
BRYAN KURTZ, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

Bryan Kurtz, M.D., representing that all of the following statements are true, deposes and says:

That on or about April 12, 1994, I was licensed to practice as a physician in the State of New York, and issued License No. 195313 by the New York State Education Department.

My current address is 35 Friar Tuck Way, Saratoga, New York 12866, 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 six 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 fifth specification, in full satisfaction of the charges against me, and agree to the following penalty:

Full compliance for a period of three years with the Probation terms attached hereto as Exhibit "B." After the terms of probation set forth in Exhibit "B" have been fully complied with by me for twenty four months, I may at that time apply to the Director of Professional Medical Conduct ("OPMC") for termination of the three year

probationary period set forth in this Consent Agreement, although I understand that the Director of OPMC shall have reasonable discretion to act on such application as he deems appropriate.

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

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 (30) 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.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 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.

DATED 6/21/05

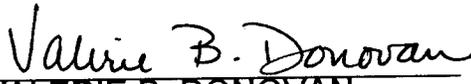
  
BRYAN KURTZ, M.D.  
Respondent

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

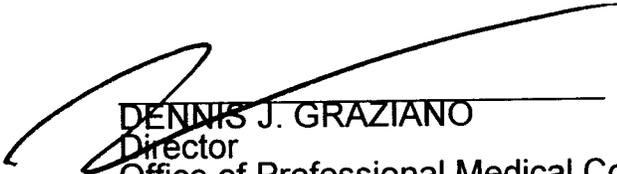
DATE: 6/27/05

  
\_\_\_\_\_  
RUDOLPH C. GABRIEL, ESQ.  
Attorney for Respondent

DATE: 6/29/05

  
\_\_\_\_\_  
VALERIE B. DONOVAN  
Assistant Counsel  
Bureau of Professional Medical Conduct

DATE: 7/11/2005

  
\_\_\_\_\_  
DENNIS J. GRAZIANO  
Director  
Office 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 (30) 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. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (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 thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) 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.
6. 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.
7. 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.
8. Respondent shall enroll in and complete the following: 20 Category 1

Continuing Medical Education (CME) in the area of infectious disease, including antimicrobial resistance; 40 Category 1 (CME) in the area of emergency medicine; and 20 Category 1 CME in the area of cardiac emergencies. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.

9. 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.
10. 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.

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

IN THE MATTER  
OF  
BRYAN KURTZ, M.D.

STATEMENT  
OF  
CHARGES

BRYAN KURTZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 12, 1994, by the issuance of license number 195313 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about May 18, 2000, Respondent provided medical care to Patient A (patients are identified in Appendix A, attached hereto), a 63-year old female, at Nathan Littauer Hospital Emergency Department (ED), Gloversville, New York. Respondent's care and treatment of Patient A failed to meet acceptable standards of care in that:
1. Respondent incorrectly diagnosed Patient A as suffering from a pilonidal abcess and/or failed to rule out a perineal abcess.
  2. Respondent instituted inappropriate antimicrobial therapy for Patient A.
  3. Respondent failed to admit Patient A, a morbidly obese diabetic with fever, vomiting, a history of cerebrovascular accident and an infectious process extending from the buttocks to the inguinal region, to the hospital for parenteral antimicrobials and for a surgical consultation and/or failed to consult with a surgeon while Patient A was in the ED.
- B. On or about February 17, 1998, Respondent provided medical care to Patient B, a 73-year old male, at Saratoga Hospital ED, Saratoga, New York. Respondent's care and treatment of Patient B failed to meet acceptable standards of care in that:

1. Respondent inappropriately discharged Patient B who presented with atypical chest pain, was persistently tachycardic and hypertensive in the ED and/or whose electrocardiogram (EKG) showed significant ST segment elevation.
  2. Respondent failed to appropriately assess Patient B's EKG.
- C. On or about May 2, 2003, Respondent provided medical care to Patient C, a 51-year old male, at Nathan Littauer Hospital ED. Respondent's care and treatment of Patient C failed to meet acceptable standards of care in that:
1. Respondent failed to treat Patient C's epididymitis with the appropriate antimicrobial therapy.
  2. Respondent failed to examine or document an examination of Patient C's heart and lungs after Patient C complained of chest pain and/or before Respondent ordered evaluations of Patient C for chest pain.
- D. On or about August 21, 2000, Respondent provided medical care to Patient D, a 59-year old female, at Nathan Littauer Hospital ED. Respondent's care and treatment of Patient D failed to meet acceptable standards of care in that:
1. Respondent inappropriately prescribed Zocor prn to Patient D.
  2. Respondent failed to appropriately assess Patient D's EKG.

### **SPECIFICATION OF CHARGES**

#### **FIRST AND SECOND 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 in paragraphs A and A.1 and/or A and A.2.

2. The facts in paragraphs B and B.1 and/or B and B.2.

### **THIRD AND FOURTH SPECIFICATIONS**

#### **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:

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

### **SIXTH 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:

6. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, C and C.1, C and C.2, D and D.1 and/or D and D.2.

DATED: June <sup>29</sup>, 2005  
Albany, New York

  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct