



***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*

October 13, 2004

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

Morteza Naghibi, M.D.  
6 Fenway Court  
Loudonville, NY 12211

Re: License No. 142078

Dear Dr. Naghibi:

Enclosed please find Order #BPMC 04-229 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect October 20, 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: Gerald S. Good, Esq.  
Carter, Conboy, Case, Blackmore, Maloney & Laird, PC  
20 Corporate Woods Blvd.  
Albany, NY 12211-2362

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

IN THE MATTER  
OF  
MORTEZA S. NAGHIBI, M.D.

CONSENT  
ORDER

BPMC No. 04-229

Upon the application of (Respondent) Morteza S. Naghibi, 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 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 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: 10/11/04

  
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  
MORTEZA S. NAGHIBI, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

Morteza S. Naghibi, M.D., representing that all of the following statements are true, deposes and says:

That on or about May 9, 1980, I was licensed to practice as a physician in the State of New York, and issued License No. 142078 by the New York State Education Department.

My current address is 6 Fenway Court, Loudonville, New York 12211, 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 two 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 the specifications, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to Section 230-a(1) of the Public Health Law, my license to practice medicine is subject to a Censure and Reprimand.

Pursuant to Section 230-a(2) of the Public Health Law, my license to practice medicine in the State of New York shall be suspended for a period of 36 months, said suspension to be stayed.

Pursuant to Section 230-a(3) of the Public Health Law, my license to practice medicine shall be subject to a restriction whereby I will be permanently prohibited from engaging in employment with a federal, state or municipal prison, jail, or correctional facility.

Pursuant to Section 230-a(9) of the Public Health Law, I shall be placed on probation for a period of 36 months, subject to the terms set forth in the attached Exhibit "B".

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

That Respondent shall maintain current registration of licensure 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.

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: 9/20/04

M. Naghibi, M.D.  
MORTEZA S. NAGHIBI, M.D.  
RESPONDENT

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

CARTER, CONBOY, CASE, BLACKMORE,  
MALONEY & LAIRD, P.C.

DATED: 9/20/04

By: Gerald S. Good  
GERALD S. GOOD, ESQ.  
Attorney for Respondent

DATED: 10/1/04

Jeffrey J. Conklin  
JEFFREY J. CONKLIN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATED: 10/8/04

Patricia E. Whitman  
PATRICIA E. WHITMAN  
Deputy Director for Operations  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
MORTEZA NAGHIBI, M.D.

STATEMENT  
OF  
CHARGES

**MORTEZA NAGHIBI, M.D.**, the Respondent, was authorized to practice medicine in New York State on or about May 9, 1980, by the issuance of license number 142078 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. At all times hereinafter mentioned, the Respondent was the part-time Medical Director for Rensselaer County Jail. In that capacity, the Respondent presented to the correctional facility once a week to treat inmate/patients, and was available by telephone to make appropriate orders and prescribe medications, among other things. Prior to July 19, 2002, the Respondent issued a standing order, which was posted at the Rensselaer County Jail, regarding treatment for inmate/patients suffering from symptoms of alcohol withdrawal, and, in particular, delirium tremens. Pursuant to the standing order, inmates/patients who presented to the Rensselaer County Jail experiencing alcohol withdrawal with delirium tremens were to be treated by the administration of Ditropan. On July 19, 2002, Patient A, hereinafter identified in Appendix "A" attached hereto, was incarcerated at the Rensselaer County Jail on charges of disorderly conduct and violation of the open container law. At that time, Patient A was suffering from symptoms of alcohol withdrawal, including delirium tremens. Pursuant to the aforesaid standing order and a telephonic verbal order made by Respondent, Ditropan was administered to Patient A to treat the symptoms of alcohol withdrawal said patient was experiencing. On the 23<sup>rd</sup> day of July, 2002, a

Rensselaer County Jail nurse communicated with the Respondent and advised him that Patient A was not responding to Ditropan. Respondent then ordered that Librium be administered to Patient A. Later on July 23<sup>rd</sup>, 2002, Patient A was found to be unresponsive in his cell. Patient A was transported to Samaritan Hospital, located in Troy, New York, where he died on said date. Respondent did not evaluate the medical condition or conduct a physical examination of Patient A at any time from July 19, 2002, through the date of said patient's death. Patient A's cause of death was determined to be cardiac arrhythmia due to alcohol withdrawal syndrome. Respondent's care and treatment of Patient A did not meet minimum standards of care in that:

1. Respondent failed to appropriately evaluate the medical condition or to take a history from Patient A from July 19, 2002, through the date of said patient's death on July 23, 2002;
2. Respondent failed to conduct a physical examination of Patient A from July 19, 2002, through the date of said patient's death on July 23, 2002;
3. Respondent was unfamiliar with the policies and procedures that applied to the medical care and treatment to be afforded inmates/patients at the Rensselaer County Jail as of July 19, 2002;
4. Respondent improperly prescribed Ditropan for the treatment of symptoms of alcohol withdrawal being experienced by Patient A;
5. Respondent failed to properly communicate with personnel at the Rensselaer County Jail as to the medication which he ordered to be administered to inmates/patients who presented with symptoms of alcohol withdrawal;
6. Respondent improperly attempted to prescribe Baclofen for the treatment of symptoms of alcohol withdrawal being experienced by Patient A;

7. Respondent improperly issued a standing order that Ditropan or Baclofen was to be administered to patients/inmates who presented with symptoms of alcohol withdrawal;
8. Respondent failed to review Patient A's medical records from the Rensselaer County Jail, which documented said patient being successfully treated for alcohol withdrawal by the administration of Librium on July 6, 2001, February 23, 2001, August 25, 2001, December 13, 2001, January 22, 2002, March 23, 2002, April 2, 2002, and May 19, 2002;
9. Respondent was unfamiliar with the policies and procedures of the Rensselaer County Jail which required said Respondent to appropriately evaluate inmates/patients for whom he issued verbal medical treatment orders, including Patient A herein;
10. During the period from July 19, 2002, through July 23, 2002, the Respondent knew, or by the exercise of reasonable care should have known, that Ditropan and Baclofen were not safe or effective for the management of acute alcohol withdrawal syndrome with delirium tremens;
11. Upon being advised on July 23, 2002, that Patient A had been administered Ditropan for the symptoms of alcohol withdrawal, Respondent ordered that Librium be administered to Patient A. At that time, Respondent failed to evaluate Patient A's medical condition or conduct a physical examination of said patient, as was indicated under the clinical circumstances presented;
12. Respondent failed to provide an acceptable or indicated level of medical care to Patient A for the treatment of the symptoms of alcohol withdrawal;

13. Respondent initiated the treatment of Patient A, who was experiencing the symptoms of alcohol withdrawal, by the administration of Ditropan and/or Baclofen, when said Respondent knew, or by the exercise of reasonable care should have known, said medications were not approved by the Food and Drug Administration for such use and were otherwise contraindicated as not effective under the clinical circumstances presented; and
14. Respondent failed to appropriately evaluate Patient A's medical condition on July 23, 2002, and to immediately hospitalize said patient, as was indicated by the clinical circumstances presented.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **(Negligence on More than One Occasion)**

Respondent is charged with professional misconduct as defined by 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 the following:

1. The facts set forth in Paragraph A and A1, A and A2, A and A3, A and A4, A and A5, A and A6, A and A7, A and A8, A and A9, A and A10, A and A11, A and A12, and A and A13.

**SECOND SPECIFICATION**

**(Incompetence on More than One Occasion)**

Respondent is charged with professional misconduct as defined by 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 the following:

2. The facts set forth in Paragraph A and A1, A and A2, A and A3, A and A4, A and A5, A and A6, A and A7, A and A8, A and A9, A and A10, A and A11, A and A12, and A and A13.

DATED: September 22, 2004  
Albany, New York

  
BRIAN M. MURPHY  
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 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 current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), 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. 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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
6. 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.
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 and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. 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.**

- 9. 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.**