

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

IN THE MATTER  
OF  
NIRMAL KADE, M.D.

SURRENDER  
ORDER

BPMC No. #08-126

Upon the application of (Respondent) NIRMAL KADE, M.D. to Surrender her license as a physician in the State of New York, which is made a part of this Surrender Order, it is

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

ORDERED, that on August 25, 2008 the Respondent's name shall be stricken from the roster of physicians in the State of New York; it is further

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

- by mailing of a copy of this Surrender Order, either by first class mail to Respondent at the address in the attached Surrender Application 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: 7-18-2008

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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  
NIRMAL KADE, M.D.

SURRENDER  
of  
LICENSE

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

That on or about July 1, 1983, I was licensed to practice as a physician in the State of New York and issued License No. 154738 by the New York State Education Department.

My current address is Redacted Address, Port Washington, 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 has charged me with twenty-two specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Surrender of License.

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York on the grounds that I agree not to contest the allegations in full satisfaction of the charges against me. The effective date of the surrender of my license is August 25, 2008.

I ask the Board to accept my Surrender of License, and I agree to be bound by all of the terms set forth in attached Exhibit "B".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged; this application 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 accepts my Surrender of License, the Chair of the Board shall issue a Surrender 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 Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender 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 ask the Board to accept this Surrender of License, which I submit of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, 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 Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board

for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and 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.

Redacted Signature

~~NIRMAL KADE, M.D., M.D.~~  
RESPONDENT

DATE 7/7/08

The undersigned agree to Respondent's attached Surrender of License and to its proposed penalty, terms and conditions.

DATE: 7/7/08

Redacted Signature

~~ALFREDO MENDEZ, ESQ.~~ *Lawrence F. Kolak*  
ABRAMS, FENSTERMAN,  
FENSTERMAN, EISMAN, GREENBERG,  
FORMATO AND EINIGER, LLP.  
Attorney for Respondent

DATE: 7/8/08

Redacted Signature

~~DANIEL GUENZBURGER~~  
ASSOCIATE COUNSEL  
Bureau of Professional Medical Conduct

DATE: 7/15/08

Redacted Signature

~~KEITH W. SERVIS~~  
Director  
Office of Professional Medical Conduct

NEW YORK STATE  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

EXHIBIT A  
DEPARTMENT OF HEALTH

IN THE MATTER  
OF  
NIRMAL KADE, M.D.

STATEMENT  
OF  
CHARGES

NIRMAL KADE, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1983, by the issuance of license number 154738 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent, a physiatrist, evaluated patients who had sustained injuries from automobile accidents and whose medical services were paid for by no-fault insurance. Respondent's physiatric evaluation frequently included electromyography ("EMG") and nerve conduction studies ("NCV"). The Respondent owned the equipment upon which the NCV study was performed and she employed and supervised the technician who performed the study.

Respondent knowingly created the false impression that the NCV reports of patients in each patient group identified in subparagraphs 1 through 9 were based upon genuine studies, when, in fact, Respondent knew that one or more of the reports per patient group was fabricated. The reports were submitted to insurance companies along with claims for reimbursement on or about and between October 2004 and January 2007. (The Patients in the Statement of Charges are identified in the annexed appendix.)

1. A1(a), A1(b), A1(c).
2. A2(a), A2(b), A2(c).
3. A3(a), A3(b).
4. A4(a), A4(b).
5. A5(a), A5(b).
6. A6(a), A6(b).
7. A7(a), A7(b), A7(c), A7(d), A7(e).
8. A8(a), A8(b).
9. A9(a), A9(b).

B. On or about June 9, 2003, Respondent performed a physiatric evaluation on Patient B, a 41 year old female who had been in a motor vehicle accident on April 25, 2003. Respondent:

1. Failed to take and/or note an adequate history.
2. Failed to identify, note and/or comment upon abnormal findings in the NCV test, including but not limited to abnormal findings in studies of the following nerves:
  - a. Tibial.
  - b. Ulnar.
  - c. Median.
3. Knowingly and falsely represented, with the intent to deceive, that Patient B was likely to have a permanent reduction of spinal movement and compromised function, when, in fact, Respondent knew that such a prognosis could not be made based on the available medical evidence.
4. Inappropriately prognosticated that Patient B was likely to have a permanent reduction in spinal movement and compromised

function.

5. With the intent to deceive, created the false impression that Patient B had bilateral median nerve testing. Respondent rendered electro-diagnostic interpretations on both the left and right median nerve, when, in fact she knew that only one median nerve had been tested.

C. On or about April 16, 2003 Respondent performed a psychiatric evaluation including electro-diagnostic studies on Patient C, a 19 year old female who had been in a motor vehicle accident on or about March 18, 2003.

Respondent:

1. Failed to take and/or note an adequate history.
2. Failed to identify and comment upon abnormal findings in the NCV test, including but not limited to abnormal findings in studies of the following nerves:
  - a. Median.
  - b. Ulnar.
  - c. Tibial.
  - d. Peroneal.
3. Knowingly and falsely represented that Patient C was likely to have a permanent reduction of spinal movement and compromised function, when, in fact, Respondent knew that such a prognosis could not be made based on the available medical evidence.
4. Inappropriately prognosticated that the Patient was likely to have a permanent reduction in spinal movement and compromised function.

D. On or about July 5, 2005 and July 19, 2005, Respondent performed a physiatric evaluation including electro-diagnostic studies on Patient D, a 27 year old male who had been in a motor vehicle accident on June 21, 2005. Respondent;

1. Failed to take and/or note an adequate history.
2. Failed to identify and comment upon abnormal findings in the NCV test, including but not limited to abnormal findings in studies of the following nerves:
  - a. Median.
  - b. Peroneal.
  - c. Tibial.
  - d. Ulnar.
3. Failed to note and comment upon findings from the lumbar and cervical MRIs.
4. Knowingly and falsely represented that Patient D was likely to have a permanent reduction of spinal movement and compromised function, when, in fact, Respondent knew that such a prognosis could not be made based on the available medical evidence.
5. Inappropriately prognosticated that Patient D was likely to have a permanent reduction in spinal movement and compromised function.

E. On or about August 4, 2005, Respondent performed a physiatric evaluation including electro-diagnostic studies on Patient E, a 62 year old male who had been in a motor vehicle accident on May 8, 2005. Respondent:

1. Failed to take and/or note a sensory examination, reflex examination, and motor examination.
2. Inappropriately performed the EMG examination by failing to evaluate paraspinal muscles.
3. Failed to identify and comment upon abnormal findings in the NCV test, including but not limited to abnormal findings in studies of the following nerves:
  - a. Ulnar.
  - b. Median.
  - c. Radial.
  - d. Tibial.
4. Failed to order appropriate imaging studies, and/or incorporate into the psychiatric impression relevant findings from imaging studies that had been ordered by others.

F. On or about April 30, 2003 Respondent performed a psychiatric evaluation including electro-diagnostic studies on Patient F, a 54 year old female who had been in a motor vehicle accident on March 25, 2003.

1. Respondent failed to adequately evaluate for possible peroneal nerve entrapment.
2. Respondent failed to identify and comment upon abnormal findings in the NCV test, including but not limited to abnormal findings in studies of the following nerves:
  - a. Median.
  - b. Peroneal.
3. With the intent to deceive, created the false impression that the

tests listed below had been performed bilaterally. Respondent rendered electro-diagnostic interpretations on purported studies of both the left and right limbs, when, in fact, she knew that the studies had been performed on only one limb:

- a. Ulnar motor study.
- b. Ulnar F wave study.
- c. Peroneal motor study.
- d. Tibial motor study.
- e. Median motor study.
- f. Median sensory study.

G. On or about May 12, 2005, the Respondent performed a physiatric evaluation including electro-diagnostic studies on Patient G, a 38 year old female who had been in a motor vehicle accident on March 28, 2005. Respondent:

1. Inappropriately performed the EMG examination by failing to evaluate paraspinal muscles.
2. Failed to order appropriate imaging studies, and/or incorporate into the physiatric impression relevant findings from imaging studies that had been ordered by others.
3. Failed to identify and comment upon abnormal findings in the NCV study of the tibial nerve.
4. With the intent to deceive, created the false impression that the tests listed below had been performed bilaterally. Respondent rendered electro-diagnostic interpretations on purported studies of both the left and right limbs, when, in fact, she knew that the studies had been performed on only one limb:
  - a. Tibial H Reflex Study.

b. Tibial Motor Study.

H. On or about November 25, 2003 Respondent performed a physiatric evaluation including electro-diagnostic studies on Patient H, a 33 year old female who had been in a motor vehicle accident on November 3, 2003.

Respondent:

1. Failed to take and/or note an adequate history.
2. Failed to adequately evaluate Patient H's shoulder.
3. Failed to identify, note and/or comment upon abnormal findings in the NCV tests, including but not limited to abnormal findings in studies of the following nerves:
  - a. Tibial.
  - b. Ulnar.
  - c. Median.
  - d. Peroneal.
4. Failed to identify, note and/or comment upon significant technical deficiencies in the performance of the right peroneal and right ulnar NCV studies.
5. With the intent to deceive, created the false impression that Patient H had bilateral median sensory testing. Respondent rendered electro-diagnostic interpretations on both the left and right median nerve, when, in fact she knew that median sensory testing had only been performed on one median nerve.

I. On multiple occasions in or about and between February, 2006 and November, 2007, Respondent improperly billed insurance carriers for medical services rendered to patients whose treatment was covered by the New York

State Workers' Compensation program. Pursuant to the Workers Compensation Law, Article 2, §13-b, a physician may not treat a Workers' Compensation patient unless the physician has been authorized by the Workers' Compensation Board. Respondent knew that she had not been authorized by the Workers' Compensation Board and was not entitled to treat and bill for medical services rendered to Workers' Compensation patients.

### **SPECIFICATION OF CHARGES**

#### **FIRST THROUGH EIGHTH SPECIFICATIONS**

##### **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:

1. A, A1, A2, A3, A4, A5, A6, A7, A8, and/or A9.
2. B and B3.
3. B and B5.
4. C and C3.
5. D and D4.
6. F, F3, F3(a), F3(b), F3(c), F3(d), F3(e), and/or F3(f).
7. G, G4, G4(a), and/or G4(b).
8. H and H5.

#### **NINTH THROUGH SIXTEENTH SPECIFICATIONS**

##### **FALSE REPORT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by wilfully making or filing a false report, or failing to

file a report required by law or by the department of health or the education department, as alleged in the facts of:

9. A, A1, A2, A3, A4, A5, A6, A7, A8, and/or A9.
10. B and B3.
11. B and B5.
12. C and C3.
13. D and D4.
14. F, F3, F3(a), F3(b), F3(c), F3(d), F3(e), and/or F3(f).
15. G, G4, G4(a), and/or G4(b).
16. H and H5.

#### **SEVENTEENTH 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:

17. A, A1, A2, A3, A4, A5, A6, A7, A8, A9, B, B3, B5, C, C2, C2(a), C2(b), C2(c), C2(d), C3, D, D2, D4, E, E3, F, F2, F3, F3(a), F3(b), F3(c), F3(d), F3(e), F3(f), G, G3, G4, G4(a), G4(b), H, and/or H5.

#### **EIGHTEENTH SPECIFICATION**

##### **FAILING TO COMPLY WITH A STATE LAW**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16) by willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of medicine, namely, Workers Compensation Law, Article 2, §13-b, as alleged in the facts of the

following:

18. Paragraph I.

### **NINETEENTH 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:

19. A, A1, A2, A3, A4, A5, A6, A7, A8, A9, B1, B2, B2(a), B2(b), B2(c), B4, B5, C, C1, C2, C2(a), C2(b), C2(c), C2(d), C4, D, D1, D2, D2(a), D2(b), D2(c), D2(d), D3, D5, E, E1, E2, E3, E3(a), E3(b), E3(c), E3(d), E4, F, F1, F2, F2(a), F2(b), F, F3, F3(a), F3(b), F3(c), F3(d), F3(e), F3(f), G, G1, G2, G3, G4, G4(a), G4(b), H, H1, H2, H3, H3(a), H3(b), H3(c), H3(d), H4, and/or H5.

### **TWENTIETH 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:

20. A, A1, A2, A3, A4, A5, A6, A7, A8, A9, B1, B2, B2(a), B2(b), B2(c), B4, B5, C, C1, C2, C2(a), C2(b), C2(c), C2(d), C4, D, D1, D2, D2(a), D2(b), D2(c), D2(d), D3, D5, E, E1, E2, E3, E3(a), E3(b), E3(c), E3(d), E4, F, F1, F2, F2(a), F2(b), F, F3, F3(a),

F3(b), F3(c), F3(d), F3(e), F3(f), G, G1, G2, G3, G4, G4(a),  
G4(b), H, H1, H2, H3, H3(a), H3(b), H3(c), H3(d), H4, and/or H5.

**TWENTY-FIRST SPECIFICATION**

**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:

21. F and F1.

**TWENTY-SECOND SPECIFICATION**

**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:

22. F and F1.

DATE: June 23, 2008  
New York, New York

Redacted Signature \_\_\_\_\_

Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

**EXHIBIT "B"**

**GUIDELINES FOR CLOSING A MEDICAL PRACTICE  
FOLLOWING MEDICAL LICENSE REVOCATION, SURRENDER  
OR SUSPENSION OF SIX MONTHS OR MORE**

1. Respondent shall immediately cease the practice of medicine in compliance with the terms of the Surrender Order. Respondent shall not represent that Respondent is eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within 15 days of the Surrender Order's effective date, Respondent shall notify all patients that Respondent has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for continued care, as appropriate.
3. Within 30 days of the Surrender Order's effective date, Respondent shall deliver Respondent's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within 30 days of the Surrender Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least 6 years after the last date of service, and, for minors, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be provided promptly or sent to the patient at reasonable cost (not to exceed 75 cents per page). Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.
5. Within 15 days of the Surrender Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender Respondent's DEA controlled substance certificate, privileges, and any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within 15 days of the Surrender Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.

7. Within 15 days of the Surrender Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.
8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by Respondent or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, before the Surrender Order's effective date.
9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for 6 months or more pursuant to this Surrender Order, Respondent shall, within 90 days of the Surrender Order's effective date, divest all financial interest in the professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Surrender Order's effective date.
10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to 4 years, under N.Y. Educ. Law § 6512. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under N.Y. Pub. Health Law § 230-a.