

April 27, 2012

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Stephen Sipperly, D.O.
Capital Care Family Practice
5 New Karner Road, Suite 6
Guilderland, NY 12084

RE: License No. 187608

Dear Dr. Sipperly:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-83. This Order and any penalty provided therein goes into effect May 4, 2012.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1717
Empire State Plaza
Albany, New York 12237

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Margaret Surowka Rossi, Esq.
Hiscock & Barclay LLP
80 State Street
Albany, NY 12207

IN THE MATTER
OF
STEPHEN SIPPERLY, D.O.

CONSENT
ORDER

Upon the application of (Respondent) Stephen Sipperly, D.O., 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.

DATE: 4/26/2012

REDACTED

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
STEPHEN SIPPERLY, D.O.

CONSENT
AGREEMENT
AND
ORDER

Stephen Sipperly, D.O., represents that all of the following statements are true:

That on November 15, 1991, I was licensed to practice as a physician in the State of New York, and issued License No. 187608 by the New York State Education Department.

My current address is Capital Care Family Practice, 5, New Karner Road, Suite 6, Guilderland, NY 12084, 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 38 specifications of professional misconduct.

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

I do not contest the Thirty-Eighth Specification, in full satisfaction of the charges against me, and agree to the following penalty:

1. Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.
2. Pursuant to New York Public Health Law §§ 230-a(7) and (9), I shall be fined in the amount of \$5,500. Payment must be submitted within thirty (30) days of the effective date of this Consent Agreement and Order to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1717
Albany, New York 12237

Failure to pay any monetary penalty by the prescribed date shall subject me 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; non-renewal of permits or licenses (Tax Law Section 171(27); State Finance Law Section 18; CPLR Section 5001; Executive Law Section 32).

3. I shall enroll in and successfully complete a continuing education program in the area of ethics for a minimum of 15 credit hours. This continuing education program is subject to the Director of OPMC's prior written approval and shall be successfully completed within the first year of the effective date of this Consent Agreement and Order.

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

I shall remain in continuous compliance with all requirements of New York Education 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. I shall not exercise the option provided in New York Education 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 I remain a licensee in New York State; and

That I 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. I shall respond in a timely manner to all OPMC requests for written periodic verification of my compliance with this Consent 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. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as I remain 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 New York 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 New York 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 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 New York Public 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 4/17/12

REDACTED

STEPHEN SIPPERLY, D.O.
RESPONDENT

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

DATE: 4/18/12

REDACTED

~~MARGARET SUROWKA ROSSI, ESQ.~~
Attorney for Respondent
Hiscock & Barclay
80 State Street
Albany, NY 12207

DATE: 4/19/12

REDACTED

~~RICHARD J. ZAHNLEUTER~~
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 4/25/12

REDACTED

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

EXHIBIT "A"
(Statement of Charges)

IN THE MATTER
OF
STEPHEN SIPPERLY, D.O.

STATEMENT
OF
CHARGES

STEPHEN SIPPERLY, D.O. (hereinafter, the "Respondent"), was authorized to practice medicine in New York State on November 15, 1991, by the issuance of license number 187608 by the New York State Education Department. The Respondent's current address, upon information and belief, is Capital Care Family Practice, 5, New Kamer Road, Suite 6, Guilderland, NY 12084.

FACTUAL ALLEGATIONS

THE RELEVANT RULE AND REGULATION

- A. Section 58-1.7(b) of the Department of Health's Rules and Regulations provides in pertinent part: "a clinical laboratory shall examine specimens only at the request of licensed physicians or other persons authorized by law to use the findings of laboratory examinations in their practice or the performance fo their official duties...."

THE RESPONDENT'S TWO AGREEMENTS WITH PWN

- B. On approximately July 3, 2003, the Respondent signed a Physician Acknowledgment and Authorization Form ("July 3, 2003 Agreement") concerning his business arrangements with a Wyoming company known as The Physician Wellness Network ("PWN"), which advertises itself as "A Web Service that Connects Consumers with Lab Services" - "Consumers choose the tests, receive the results, and most importantly, decide when to share

that information with insurance companies, employers and family physicians.”

- C. The July 3, 2003 Agreement provides in pertinent part that PWN is engaging the Respondent to authorize or order a clinical laboratory, Quest Diagnostics, to perform lab tests for “customers” who patronize PWN and/or Quest Diagnostics.
- D. The July 3, 2003 Agreement specifically provides in pertinent part that the Respondent:
 - 1. Agrees to “review for medical appropriateness the laboratory testing information services requested by individual customers”;
 - 2. Agrees to “order only those testing services that [the Respondent] determine[s] to be medically appropriate for the individual customer”; and
 - 3. Authorizes Quest Diagnostics to “accept any orders for laboratory testing relayed by PWN and to deliver to PWN all test results reports deliverable to [the Respondent].”
- E. On approximately March 22, 2007, the Respondent signed another Acknowledgment and Authorization Form (“March 22, 2007 Agreement”) concerning his business arrangements with PWN.
- F. The March 22, 2007 Agreement provides in pertinent part that PWN has engaged businesses known as “selected facilitators of lab test services” and the Respondent agrees to authorize or order Quest Diagnostics to perform lab tests for the “Participants” who patronize PWN and/or PWN’s facilitators.
- G. The March 22, 2007 Agreement specifically provides in pertinent part that the Respondent:
 - 1. Agrees to “review for medical appropriateness the laboratory testing information services requested by individual

Participants”;

2. Agrees to “order only those testing services that [the Respondent] determine[s] to be medically appropriate for the individual Participants”; and
3. Acknowledges “that each Participant will request a copy of the results of his or her Test Result Information through a Facilitator” and authorizes “the simultaneous release of those results from Quest Diagnostics to the Facilitator with whom the Participant is associated, and to PWN.”

**THE LAB TESTS THE RESPONDENT AUTHORIZED OR ORDERED
QUEST DIAGNOSTICS TO PERFORM**

- H. Pursuant to the July 3, 2003 and March 22, 2007 Agreements, for a fee paid by PWN, the Respondent authorized or ordered Quest Diagnostics to perform lab tests for “customers” and “participants” of PWN and/or PWN’s facilitators between approximately April 14, 2005 and September 4, 2008 for HIV, herpes, hepatitis B and C, syphilis, chlamydia, and/or gonorrhea.
- I. Individually and/or collectively, with respect to the 18 illustrations of the lab tests set forth in the table in paragraphs J through AA below, the Respondent did not meet acceptable standards of medical care in that the Respondent authorized or ordered Quest Diagnostics to perform lab tests:
 1. Without the Respondent having performed an adequate medical evaluation of the patient;
 2. Without the Respondent having formulated an adequate diagnosis or treatment plan for the patient;
 3. Without the Respondent having provided adequate follow-up care for the patient;

4. Without the Respondent having maintained an adequate medical record that reflects the evaluation and treatment of the patient; and
5. Without the Respondent otherwise having had a sufficient physician-patient relationship with the patient.

Paragraph	Patient Name ¹	Lab Tests Authorized or Ordered	Positive Results
J.	A	Herpes	Herpes
K.	B	Herpes Hepatitis B Chlamydia Gonorrhea Syphilis	Herpes Hepatitis B
L.	C	Herpes	Herpes
M.	D	Herpes Hepatitis B Chlamydia Gonorrhea Syphilis	Herpes
N.	E	Herpes Hepatitis B Chlamydia Gonorrhea Syphilis	Chlamydia
O.	F	Herpes Hepatitis B Chlamydia Gonorrhea Syphilis	Herpes
P.	G	HIV	HIV

¹To preserve privacy throughout this document, patients are referred to by letter designation. An Appendix of Patient Names, Appendix "A," is attached hereto for appropriate recipients.

Paragraph	Patient Name	Lab Tests Authorized or Ordered	Positive Results
Q.	H	Herpes Hepatitis B Chlamydia Gonorrhea Syphilis	Herpes
R.	I	Herpes Hepatitis B Hepatitis C Chlamydia Gonorrhea Syphilis	Herpes
S.	J	Herpes Chlamydia Gonorrhea Syphilis	Herpes
T.	K	Chlamydia Gonorrhea	Chlamydia
U.	L	Herpes	Herpes
V.	M	Herpes	Herpes
W.	N	Herpes Chlamydia Gonorrhea Syphilis	Herpes
X.	O	Herpes	Herpes
Y.	P	Herpes Chlamydia Gonorrhea Syphilis	Herpes
Z.	Q	Chlamydia Herpes HIV Syphilis	-
AA.	R	Chlamydia Herpes Hepatitis B Hepatitis C Syphilis	-

BB. The Respondent failed to make available within 30 days of the Department of Health's request documents relevant to paragraphs A through Y above that were sought in a letter dated July 22, 2009 and that were again sought in a follow-up letter dated January 11, 2010.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

(NEGLIGENCE ON MORE THAN ONE OCCASION)

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion, as alleged in any two or more of the following:

1. The facts set forth in paragraphs J and/or K and/or L and/or M and/or N and/or O and/or P and/or Q and/or R and/or S and/or T and/or U and/or V and/or W and/or X and/or Y and/or Z and/or AA and/or A, B, C, D I(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).

SECOND THROUGH NINETEENTH SPECIFICATIONS

(PERMITTING, AIDING AND ABETTING UNLICENSED PRACTICE)

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(11) by permitting, aiding, or abetting an unlicensed person to perform activities requiring a license, as alleged in the following:

2. The facts set forth in paragraphs J and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
3. The facts set forth in paragraphs K and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
4. The facts set forth in paragraphs L and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
5. The facts set forth in paragraphs M and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
6. The facts set forth in paragraphs N and/or A, B, C, D(1, 2, and/or 3),

- E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
7. The facts set forth in paragraphs O and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 8. The facts set forth in paragraphs P and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 9. The facts set forth in paragraphs Q and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 10. The facts set forth in paragraphs R and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 11. The facts set forth in paragraphs S and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 12. The facts set forth in paragraphs T and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 13. The facts set forth in paragraphs U and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 14. The facts set forth in paragraphs V and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 15. The facts set forth in paragraphs W and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 16. The facts set forth in paragraphs X and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 17. The facts set forth in paragraphs Y and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 18. The facts set forth in paragraphs Z and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).
 19. The facts set forth in paragraphs AA and/or A, B, C, D(1, 2, and/or 3), E, F, G(1, 2, and/or 3), H, and/or I(1, 2, 3, 4 and/or 5).

**TWENTIETH THROUGH THIRTY-SEVENTH SPECIFICATIONS
(FAILING TO MAINTAIN RECORDS FOR PATIENTS)**

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(32) by failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient, as alleged in the following:

20. The facts set forth in paragraphs J and/or I(4).
21. The facts set forth in paragraphs K and/or I(4).
22. The facts set forth in paragraphs L and/or I(4).
23. The facts set forth in paragraphs M and/or I(4).
24. The facts set forth in paragraphs N and/or I(4).
25. The facts set forth in paragraphs O and/or I(4).
26. The facts set forth in paragraphs P and/or I(4).
27. The facts set forth in paragraphs Q and/or I(4).
28. The facts set forth in paragraphs R and/or I(4).
29. The facts set forth in paragraphs S and/or I(4).
30. The facts set forth in paragraphs T and/or I(4).
31. The facts set forth in paragraphs U and/or I(4).
32. The facts set forth in paragraphs V and/or I(4).
33. The facts set forth in paragraphs W and/or I(4).
34. The facts set forth in paragraphs X and/or I(4).
35. The facts set forth in paragraphs Y and/or I(4).
36. The facts set forth in paragraphs Z and/or I(4).
37. The facts set forth in paragraphs AA and/or I(4).

THIRTY-EIGHTH SPECIFICATION

**(FAILING TO MAKE REQUESTED DOCUMENTS
AVAILABLE TO THE DEPARTMENT OF HEALTH)**

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(28) by failing to make available to the Department of Health within 30 days relevant records with respect to an inquiry or complaint about the Respondent's professional misconduct, as alleged in the following:

38. The facts set forth in paragraph BB.

DATED: *April*
February *23* 2012
Albany, New York

REDACTED

Peter D. Van Buren
Deputy Counsel
Bureau of Professional
Medical Conduct