



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

Kendrick A. Sears, M.D.
Chairman

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

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

April 6, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Laxmikant Bhoiwala, M.D.
597 Columbia Turnpike
East Greenbush, NY 12061

Re: License No. 197789

Dear Dr. Bhoiwala:

Enclosed is a copy of Order #BPMC 05-61 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect April 13, 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,

Redacted Signature

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: John T. Maloney, Esq.
Carter, Conboy, Case, Blackmore, Maloney & Laird, P.C.
20 Corporate Woods Blvd.
Albany, NY 12211-2362

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

IN THE MATTER
OF
LAXMIKANT BHOIWALA, M.D.

CONSENT
ORDER

BPMC No. 05-61

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 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: 4/4/05

Redacted Signature

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
LAXMIKANT BHOIWALA, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

LAXMIKANT BHOIWALA, M.D., representing that all of the following statements are true, states:

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, NY, 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 eight 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 agree to not contest the following allegations of specification one: A and A2; A and A3; B and B2; C and C3; C and C4; C and C5; C and C7; D and D3; D and D4; E and E3; E and E4; F and F1; G and G4 in full satisfaction of the charges against me, and agree to the following penalty:

My license shall be subject to a censure and reprimand. I shall be placed on probation for a period of three years. The terms of probation are attached in 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. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

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: 3/22/05

Redacted Signature

LAXMIKANT BHOWALA, M.D.
RESPONDENT

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

DATE: 3/22/05

Redacted Signature

~~JOHN T. MALONEY, ESQ.~~
Attorney for Respondent

DATE: 3/23/05

Redacted Signature

~~ANTHONY M. BENIGNO~~
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 3/31/05

Redacted Signature

~~DENNIS J. GRAZIANO~~
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
LAXMIKANT BHOIWALA, M.D.

STATEMENT
OF
CHARGES

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

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A (a list of patient names is attached in Appendix A), a 26 year old female on or about October 28, 2003 at his medical office at 597 Columbia Turnpike, East Greenbush, New York. Patient A presented with a history of asthma with exacerbation on that date plus a possible respiratory infection. Respondent's medical care of Patient A failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to promptly return to the treatment room after being informed that the patient was in distress after giving her a nebulizer treatment.
 2. Respondent failed to re-examine Patient A's lungs after the nebulizer treatment and before discharge.
 3. Respondent inappropriately advised the patient to lie down after she had vomited.
 4. Respondent failed to maintain the medical record accurately reflecting the evaluation and treatment of Patient A.

EXHIBIT A

B. Respondent treated Patient B, a 52 year old woman, at this medical office on or about May 30, 2003 for a cat bite to her hand. Respondent sutured the puncture wound and dispensed Augmentin with instructions to return in ten days. Respondent's medical care of Patient B failed to meet accepted standards of medical care in the following respects:

1. Respondent inappropriately sutured the puncture wounds.
2. Respondent failed to give appropriate instructions to Patient B when dispensing the antibiotics.

C. Respondent treated Patient C, a 59 year old woman, who presented to his office on November 1, 2002, complaining of post-nasal drip, cough production of yellow phlegm, left back pain and tightening of her chest. Respondent treated Patient C on various occasions through February 1, 2003 until her admission for a markedly abnormal chest x-ray. She died on February 7, 2003 from advanced lung cancer. Respondent's medical care of Patient C failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to obtain and/or record an adequate history for Patient C.
2. Respondent failed to perform and/or record an adequate physical examination for Patient C.
3. Respondent failed to adequately address Patient C's elevated blood pressure.
4. Respondent failed to timely order appropriate diagnostic tests.
5. Respondent failed to adequately assess Patient C's elevated heart rate.

6. Respondent incorrectly diagnosed the patient with acute chronic obstructive pulmonary disease exacerbation.
 7. Respondent inappropriately continued to prescribe antibiotic therapy despite little or no improvement of the symptoms.
 8. Respondent failed to order appropriate consultations.
 9. Respondent inappropriately administered five intramuscular injections of Depo-medrol in a twelve week period.
 10. Respondent failed to properly assess Patient C's weight loss of approximately 30 pounds in three months.
- D. Respondent treated Patient D, a 55 year old male, at his medical office from on or about March 31, 1999 through on or about January 21, 2004. Respondent's medical care of Patient D failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to perform and/or record an adequate physical examination of Patient D on various office visits.
 2. Respondent inappropriately diagnosed Patient D with Chronic Obstructive Pulmonary Disease (COPD) and acute exacerbation of COPD.
 3. Respondent treated Patient D with excessive amounts of intramuscular steroidal injections.
 4. Respondent failed to order appropriate diagnostic tests.
 5. Respondent failed to order appropriate consultations.
- E. Respondent treated Patient E, a 48 year old female, at his office from on or about March 1, 1997 through on or about June 14, 2003. Respondent's medical care of Patient E failed to meet accepted standards of medical care

in the following respects:

1. Respondent failed to maintain a record which accurately reflected the care and treatment of Patient E.
 2. Respondent incorrectly diagnosed Patient E with COPD and/or COPD exacerbation.
 3. Respondent failed to order appropriate and/or timely diagnostic tests.
 4. Respondent failed to order appropriate medications for the patient to take at home.
 5. Respondent failed to appropriately treat Patient E's recurring back pain.
- F. Respondent treated Patient F, a 53 year old female, at his office from July 19, 1998 through January 2, 2004. Respondent's medical care of Patient F failed to meet accepted standards of medical care in the following respects:
1. Respondent treated Patient F excessively with intramuscular steroidal injections.
- G. Respondent treated Patient G, a 54 year old male, from on or about August 23, 1999 through on or about December 11, 2003. Respondent's medical care of Patient G failed to meet accepted standards of medical care in the following respects:
1. Respondent incorrectly diagnosed Patient G with acute bronchitis.
 2. Respondent incorrectly diagnosed Patient G with COPD.
 3. Respondent failed to perform and/or record an adequate physical examination for Patient G.
 4. Respondent administered excessive intramuscular steroidal injections.

5. Respondent failed to order appropriate diagnostic tests.
6. Respondent failed to obtain appropriate consultations.

SPECIFICATION OF CHARGES

FIRST 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:

1. The facts in paragraphs A and A1, A and A2, A and A3, A and A4, B and B1, B and B2, C and C1, C and C2, C and C3, C and C4, C and C5, C and C6, C and C7, C and C8, C and C9, C and C10, D and D1, D and D2, D and D3, D and D4, D and D5, E and E1, E and E2, E and E3, E and E4, E and E5, F and F1, G and G1, G and G2, G and G3, G and G4, G and G5, and/or G and G6.

SECOND 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:

2. The facts in paragraphs A and A1, A and A2, A and A3, A and A4, B and B1, B and B2, C and C1, C and C2, C and C3, C and C4, C and C5, C and C6, C and C7, C and C8, C and C9, C and C10, D and D1, D and D2, D and D3, D and D4, D and D5, E and E1, E and E2, E and E3, E and E4, E and E5, F and F1, G and G1, G and G2, G and G3, G and G4, G and G5, and/or G and G6.

THIRD THROUGH FOURTH 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:

3. The facts in paragraphs B and B1 and/or B and B2.
4. The facts in paragraphs C and C1, C and C2, C and C3, C and C4, C and C5, C and C6, C and C7, C and C8, C and C9 and/or C and C10.

FIFTH THROUGH SIXTH 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:

5. The facts in paragraphs B and B1 and/or B and B2.
6. The facts in paragraphs C and C1, C and C2, C and C3, C and C4, C

and C5, C and C6, C and C7, C and C8, C and C9 and/or C and C10.

SEVENTH THROUGH EIGHTH SPECIFICATIONS
FAILURE TO MAINTAIN RECORDS

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

7. The facts in paragraphs A and A4.
8. The facts in paragraphs E and E1.

DATED: March 23, 2005
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 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 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.
3. 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.
4. 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.
5. 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 Respondent's staff at practice locations or OPMC offices.
6. 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.

PRACTICE MONITOR

7. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, hereinafter referred to as "practice monitor", board certified in an appropriate specialty, proposed by Respondent and subject to the written approval of the Director of OPMC.

- a. Respondent shall make available to the practice monitor any and all records or access to the practice requested by said 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 practice 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.

CLINICAL COMPETENCY ASSESSMENT

8. Respondent shall obtain a clinical competency assessment performed by a program for such assessment as directed by the Director of OPMC. Respondent shall cause a written report of such assessment to be provided to the Director of OPMC within sixty (60) days of the effective date of this Order.
 - a. Respondent shall be responsible for all expenses related to the clinical competency assessment and shall provide to the Director of OPMC proof of full payment of all costs that may be charged. This term of probation shall not be satisfied in the absence of actual receipt, by the Director, of such documentation, and any failure to satisfy shall provide a basis for a Violation of Probation proceeding.
9. Within thirty (30) days of receipt of the clinical competency assessment report by OPMC, the Director shall render a decision, at said Director's sole discretion, as to whether the Respondent's practice of medicine shall remain subject to a practice monitor, as set forth in paragraph "7" herein, or be subject to a practice supervisor, as set forth in paragraph "9(a)". Additionally, the Director shall determine such other terms and/or condition of practice, if any, as may be consistent with the recommendation(s) in the clinical competency assessment report, including personalized continuing medical education, if appropriate, as set forth in paragraph "10".

PRACTICE SUPERVISOR

- a. In the event the Director of OPMC determines that Respondent's practice of medicine ought to be subject to a practice supervisor, pursuant to paragraph "9" herein, within thirty (30) days of said decision, Respondent shall practice medicine only when supervised in his/her medical practice for the duration of the probationary term. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. The practice supervisor shall be proposed by Respondent and subject to the written approval of the Director. The practice supervisor shall not be a family member or personal friend, or be in a professional relationship which could pose a conflict with supervision responsibilities.
- b. Respondent shall ensure that the practice supervisor is familiar with the Order and terms of probation, and willing to report to OPMC. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
- c. Respondent shall authorize the practice supervisor to have access to his/her patient records and to submit quarterly written reports, to the Director of OPMC, regarding Respondent's practice. These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, general demeanor, time and attendance, the supervisor's assessment of patient records selected for review and other such on-duty conduct as the supervisor deems appropriate to report.

PERSONALIZED CONTINUING MEDICAL EDUCATION

10. Within thirty (30) days of receipt of the clinical competency assessment report by OPMC, the Director may direct that Respondent be enrolled in a course of personalized continuing medical education, which includes an assigned preceptor, preferably a physician board certified in the same specialty, to be approved, in writing, by the Director of OPMC. Respondent shall remain enrolled and shall fully participate in the program for a period of time to be determined by the Director, but in no event shall the enrollment be less than three months nor longer than twelve months.

The Respondent shall cause the Preceptor to:

- a. Develop and submit to the Director of OPMC for written approval a remediation plan, which addresses the deficiencies /retraining recommendations identified in the CCA. Additionally, this proposal shall establish a time frame for completion of the remediation program of not less than three months and no longer than twelve months.
- b. Submit progress reports at periods identified by OPMC certifying whether the Respondent is fully participating in the personalized continuing medical education program and is making satisfactory progress towards the completion of the approved remediation plan.
- c. Report immediately to the Director of OPMC if the Respondent

withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by the Respondent.

- d. At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by the Respondent toward remediation of all identified deficiencies.
11. 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.