



**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*

Kendrick A. Sears, M.D.  
*Chair*

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

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

Public

November 8, 2006

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Daniel Cheng, M.D.  
110 Third Street  
Waterford, NY 12188

Re: License No. 126436

Dear Dr. Cheng:

Enclosed is a copy of Order #BPMC 06-255 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect November 15, 2006.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this 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: Kyle N. Kordich, Esq.  
Thorn, Gershon, Tymann and Bonanni, LLP  
P.O. Box 15054  
5 Wembley Court, New Karner Rd  
Albany, NY 12212-5054

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

IN THE MATTER  
OF  
DANIEL CHENG, M.D.

CONSENT  
ORDER

BPMC No. #06-255

Upon the application of (Respondent) Daniel Cheng, 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: 11-7-06

  
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  
DANIEL CHENG, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

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

That on or about March 5, 1976, I was licensed to practice as a resident in the State of New York, and issued License No. 126436 by the New York State Education Department.

My current registration address is 110 Third Street, Waterford, New York, 12188 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(2) of the Public Health Law, my medical licence to practice medicine shall be suspended for a period of fifty-four (54) months, the term of said suspension to be stayed;

Pursuant to Section 230-a(8) of the Public Health Law, I agree to submit to a clinical assessment within six (6) months of the effective date of this order, and to be bound by the recommendations which result therefrom;

Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of fifty-four (54) months, subject to the terms set forth in attached Exhibit "B".

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 the future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

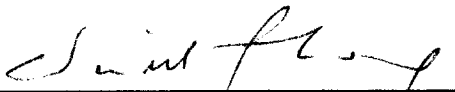
I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall 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: 10-17-06

  
\_\_\_\_\_  
Daniel Cheng, M.D.  
RESPONDENT

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

Thorn, Gershon, Tymann & Bonanni, LLP

DATED: 10/19/06

By:   
KYLE KORDICH, ESQ.  
Attorney for Respondent

DATED: 10/24/06

  
JEFFREY J. CONKLIN, ESQ.  
Bureau of Professional Medical Conduct

DATED: 11/04/2006

  
DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
DANIEL CHENG, M.D.

STATEMENT  
OF  
CHARGES

DANIEL CHENG, M.D., the Respondent, was authorized to practice medicine in New York State on or about the 5<sup>th</sup> day of March, 1976, by the issuance of license number 126436 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A (hereinafter identified in the attached Appendix A) 60 years of age, at 110 3<sup>rd</sup> Street, Waterford, New York (hereinafter the "Office") at various times between July 26, 1996, and May 30, 2003. Respondent's care and treatment of Patient A failed to meet accepted standards of medical practice in that:
1. Respondent failed to properly document neurological vascular examinations conducted of Patient A;
  2. Respondent failed to properly document physical examinations conducted of Patient A's feet;
  3. Respondent failed to prescribe an appropriate dosage of Synthroid which should have been titrated to Patient A's thyroid-stimulating hormone (TSH) levels;
  4. Respondent failed to perform indicated stool tests of Patient A; and
  5. Respondent failed to perform periodic review of systems for Patient A.



B. Respondent provided medical care to Patient B (hereinafter identified in the attached Appendix "A") 63 years of age, at his Office at various times between June 5, 2000, and June 19, 2003. Respondent's care and treatment of Patient B failed to meet accepted standards of medical practice in that:

1. Respondent prescribed medications for Patient B without adequate justification therefor;
2. Respondent failed to properly document an appropriate a referral of Patient B to a nutritionist and/or counseling said patient on weight reduction counseling;
3. Respondent failed to properly document neurological and vascular examinations conducted of Patient B;
4. Respondent failed to prescribe indicated medications to protect Patient B from renal failure;
5. Respondent performed excessive electrocardiogram (EKG) examinations of Patient B;
6. Respondent failed to perform periodic and adequate review of symptoms of Patient B;
7. Respondent failed to make appropriate and indicated referrals of Patient B for podiatric and ophthalmologic examinations;
8. Respondent failed to perform regular health maintenance of Patient B, including, but not limited to, scheduling colonoscopies, and administering flu shots and pneumovax vaccinations; and
9. Respondent inappropriately prescribed Zylorin to treat pain resulting from an acute gout attack suffered by Patient B.

C. Respondent provided medical care to Patient C (hereinafter identified in the attached Appendix "A") 49 years of age, at his Office at various times between December 23, 1998, and July 15, 2003. Respondent's care and treatment of Patient C failed to meet accepted standards of medical practice in that:

1. Respondent failed to properly document neurological and vascular examinations conducted of Patient C;
2. Respondent failed to make an appropriate and indicated referral of Patient C for a podiatric examination;
3. Respondent failed to properly document a referral of Patient C to a nutritionist and/or counseling said patient on weight reduction;
4. Respondent failed to make an appropriate and indicated referral of Patient C to a cardiologist;
5. Respondent failed to perform appropriate and indicated pelvic examinations of Patient C;
6. Respondent failed to perform appropriate and indicated urine testing for albuminuria of Patient D; and
7. Respondent failed to prescribe an appropriate and indicated angiotensin-converting enzyme (ACE) inhibitor for Patient C.

D. Respondent provided medical care to Patient D (hereinafter identified in the attached Appendix "A") 35 years of age, at his Office at various times between October 25, 2002, and December 24, 2003. Respondent's care and treatment of Patient D failed to meet accepted standards of medical practice in that:

1. Respondent failed to perform appropriate and indicated review of systems for Patient D;
2. Respondent failed to screen Patient D for hyperlipidemia and

hyperglycemia, including ordering appropriate and indicated fasting glucose test and lipid panel of Patient D;

3. Respondent failed to properly document appropriate counseling to Patient D about the health risks of smoking;
4. Respondent failed to screen Patient D for alcoholism;
5. Respondent failed to record the weight of Patient D at the time of certain office visits; and
6. Respondent failed to schedule an appropriate and indicated follow-up visit to monitor Patient D's response to Viagra.

E. Respondent provided medical care to Patient E (hereinafter identified in the attached Appendix "A") 31 years of age, at his Office at various times between February 23, 1993, and August 2003. Respondent's care and treatment of Patient E failed to meet accepted standards of medical practice in that:

1. Respondent failed to perform appropriate and indicated review of systems for Patient E;
2. Respondent failed to order appropriate and indicated tests to address Patient E's symptoms of chest tightness and chest pain;
3. Respondent failed to make an appropriate and indicated referral of Patient E to a cardiologist; and
4. Respondent failed to properly document appropriate counseling to Patient E about the health risks of smoking.

F. Respondent provided medical care to Patient F (hereinafter identified in the attached Appendix "A") 66 years of age, at his Office at various times between January 11, 2000, and May 2003. Respondent's care and treatment of Patient

F failed to meet accepted standards of medical practice in that:

1. Respondent failed to document rationale for treatment of Patient F with Lanoxin;
2. Respondent failed to document the basis for the diagnosis that Patient F was suffering from migraine headaches;
3. Respondent failed to properly document a referral of Patient F to a nutritionist and/or counseling said patient on weight reduction;
4. Respondent failed to properly document appropriate counseling to Patient F about the health risks of smoking;
5. Respondent failed to prescribe an appropriate and indicated ACE inhibitor for Patient F;
6. Respondent failed to make an appropriate and indicated referral of Patient F for a podiatric examination;
7. Respondent failed to make an appropriate and indicated referral of Patient F for an ophthalmologic examination;
8. Respondent failed to perform an indicated evaluation of the sensation in Patient F's feet;
9. Respondent failed to perform an evaluation of the peripheral pulses of Patient F; and
10. Respondent failed to perform an appropriate and indicated evaluation of Patient F's renal function by measuring urinary protein.

**SPECIFICATION OF CHARGES**

**FIRST THROUGH SIXTH SPECIFICATIONS**  
**(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 set forth in Paragraphs A and A1, A and A2, A and A3, A and A4, and A and A5;
2. The facts set forth in Paragraphs B and B1, B and B2, B and B3, B and B4, B and B5, B and B6, B and B7, B and B8, and B and B9;
3. The facts set forth in Paragraphs C and C1, C and C2, C and C3, C and C4, C and C5, C and C6, and C and C7;
4. The facts set forth in Paragraphs D and D1, D and D2, D and D3, D and D4, D and D5, and D and D6;
5. The facts set forth in Paragraphs E and E1, E and E2, E and E3, and E and E4; and
6. The facts set forth in Paragraphs F and F1, F and F2, F and F3, F and F4, F and F5, F and F6, F and F7, F and F8, F and F9, and F and F10.


**SEVENTH THROUGH TWELVETH SPECIFICATIONS**  
**(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:

7. The facts set forth in Paragraphs A and A1, A and A2, A and A3, A and A4, and A and A5;

8. The facts set forth in Paragraphs B and B1, B and B2, B and B3, B and B4, B and B5, B and B6, B and B7, B and B8, and B and B9;
9. The facts set forth in Paragraphs C and C1, C and C2, C and C3, C and C4, C and C5, C and C6, and C and C7;
10. The facts set forth in Paragraphs D and D1, D and D2, D and D3, D and D4, D and D5, and D and D6;
11. The facts set forth in Paragraphs E and E1, E and E2, E and E3, and E and E4; and
12. The facts set forth in Paragraphs F and F1, F and F2, F and F3, F and F4, F and F5, F and F6, F and F7, F and F8, F and F9, and F and F10.

DATED: October 24, 2006  
Albany, New York

  
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 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 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 § 171(27)]; State Finance Law § 18; CPLR § 5001; Executive Law § 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 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 day period. Respondent shall then notify the Director again at least fourteen 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.
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.

### **PRACTICE MONITOR**

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.

### **CLINICAL COMPETENCY ASSESSMENT**

10. 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 directly to the Director of OPMC within six (6) months 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.



11. At the direction of the Board and within sixty (60) days following the completion of the clinical competency assessment (CCA) the Respondent shall identify a Preceptor, preferably a physician who is board certified in the same specialty, to be approved in writing, by the Director of OPMC. 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.
  - 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.

Respondent shall be solely responsible for all expenses associated with these terms, including fees, if any, for the clinical competency assessment, the personalized continuing medical education program, or to the monitoring physician.

12. 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.