



***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*

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*Executive Deputy Commissioner  
NYS Department of Health*

Dennis J. Graziano, Director  
*Office of Professional Medical Conduct*

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*Vice Chair*

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

June 17, 2002

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

Gaston F. DaCosta, M.D.  
36381 NYS Route 26  
Carthage, NY 13619

RE: License No. 188409

Dear Dr. DaCosta:

Enclosed please find Order #BPMC 02-201 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect June 17, 2002.

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 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: Norman A. Bloch, Esq.  
Grover and Bloch  
Three New York Plaza  
New York, NY 10004

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

IN THE MATTER  
OF  
GASTON F. DA COSTA, M.D.

CONSENT  
ORDER  
BPMC No. 02-201

Upon the application of Gaston F. Da Costa, M.D. (Respondent) in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

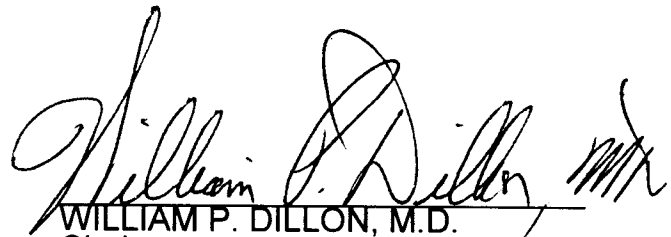
ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED, and it is further

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: 6/12/07

  
WILLIAM P. DILLON, 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  
GASTON F. DA COSTA, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

Gaston F. Da Costa, M.D., representing that all of the following statements are true, deposes and says:

That on or about February 18, 1992, I was licensed to practice as a physician in the State of New York, and issued License No. 188409 by the New York State Education Department.

My current address is 36381 NYS Route 26, Carthage, New York 13619, 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-one 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 do not contest the sixth specification, in full satisfaction of the charges against me, and agree to the following penalty:

1. A five year suspension, stayed.
2. Five years probation in accordance with the terms set forth in Exhibit B, hereto.

That Respondent shall maintain current registration of licensure with the New York State Education Department Division of

Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.


I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to

the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

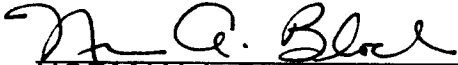
I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATED 5/23/02

  
GASTON F. DA COSTA, M.D.  
RESPONDENT

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

DATE: 5/29/02

  
NORMAN A. BLOCH, ESQ.  
of counsel to Grover & Bloch  
Attorneys for Respondent

DATE: 5/30/02

  
TIMOTHY J. MAHAR  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 6/6/02

  
DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

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

IN THE MATTER  
OF  
GASTON F. DA COSTA, M.D.

AMENDED  
STATEMENT  
OF  
CHARGES

Gaston F. Da Costa, M.D., Respondent, was authorized to practice medicine in New York State on February 18, 1992, by the issuance of license number 188409 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent provided obstetrical care to Patient A from approximately April, 1997 through November, 1997 at his office and the Carthage Area Hospital.

Respondent's medical care of Patient A deviated from accepted standards of medical care in the following respects:

1. Respondent, during labor, failed to adequately reevaluate Patient A as a candidate for a vaginal delivery following a cesarean section.
2. Respondent failed to appropriately and/or competently evaluate and/or assess the risks to Patient A's fetus during the course of labor.

3. Respondent failed to timely perform a cesarean section on Patient A.
4. Respondent inappropriately attempted a vacuum assisted delivery of Patient A's fetus.
5. Respondent failed to maintain an adequate medical record for Patient A.

B. Respondent provided obstetrical care to Patient B from approximately February, 1997 through November, 1997 at his office and at the Carthage Area Hospital.

Respondent's medical care of Patient B deviated from accepted standards of care in the following respects:

1. Respondent failed to appropriately manage the use of Pitocin in Patient B's care.
2. Respondent failed to timely treat and/or respond to Patient B's elevated blood pressure with seizure prophylaxis.
3. Respondent failed to appropriately and/or competently evaluate and/or assess the risks to Patient B's fetus at various times during labor, and/or failed to make an adequate record of the same.
4. Respondent failed to timely perform a cesarian section of Patient B and/or arrange for the timely delivery of the fetus by another physician.



C. Respondent provided obstetrical care to Patient C at his office and the Carthage Area Hospital from approximately April, 1999 to November, 1999.

Respondent's medical care of Patient C deviated from accepted standards of care in the following respects:

1. Respondent failed to timely and/or appropriately treat Patient C's post-partum bleeding.

D. Respondent provided obstetrical care to Patient D from approximately June, 1995 to September, 1995 at Vassar Brothers Hospital, Poughkeepsie, New York. Respondent's care of Patient D deviated from accepted standards of care in the following respects:

1. Respondent failed to adequately evaluate and/or assess Patient D for signs or symptoms of ectopic pregnancy.
2. Respondent failed to timely diagnose an ectopic pregnancy in Patient D.
3. Respondent failed to timely treat an ectopic pregnancy in Patient D.
4. Respondent failed to maintain an adequate medical record for Patient D.

E. Respondent provided medical care to Patient E from approximately March 2, 1995 to August 3, 1995 at Vassar Brother's Hospital for an unspecified uterine malignancy, among other conditions. Respondent's medical care of Patient E deviated from accepted standards of care in the following respects:

1. Respondent failed to sample or provide for the sampling of Patient E's lymph nodes at the time of her hysterectomy.

F. Respondent, on or about October 5, 1978, was convicted in the Bronx County Court of petit larceny (Penal Law § 155.25), a class A misdemeanor and was sentenced to a one year conditional discharge, and was ordered to pay \$985 in restitution, among other things.

On or about May 25, 1994, Respondent applied for medical staff privileges at Vassar Brothers Hospital and falsely answered the following question in the negative on the application for hospital privileges:

5. Are you or have you ever been the subject of or defendant in any criminal proceedings and/or have you ever been convicted or (sic) a crime (other than a minor traffic violation?)

1. Respondent answered falsely that portion of question No. 5 which inquired as to whether Respondent had ever been the subject of or a defendant in any criminal proceeding, when Respondent knew or should have known that he had been the subject of and the defendant in People of State of New York v. Gaston Da Costa, Bronx County Court, Court No. 820270/78.

2. Respondent answered falsely that portion of question No. 5 which inquired as to whether Respondent had ever been convicted of a crime, when Respondent knew or should have known that he had been convicted of a crime, i.e., petit larceny, in the Bronx County Court.

G. On or about September 7, 1995, Respondent re-applied for hospital privileges at Vassar Brothers Hospital and falsely answered "no" to the following question on the application:

14. Are you the subject of any criminal proceedings and/or have you ever been convicted of a crime (other than a minor traffic violation)?

1. Respondent falsely answered "no" to that portion of question No. 14 which inquired as to whether

he had ever been convicted of a crime, when Respondent knew or should have known that he had been convicted of a crime, i.e., petit larceny, in or about October, 1978 in the Bronx County Court.

H. Prior to February 18, 1992, Respondent applied for a New York State medical license and falsely answered "no" to the following questions on the application for licensure:

10. Have you ever been convicted of a crime (felony or misdemeanor) in any state or country?
11. Have you ever been charged with a crime (felony or misdemeanor) in any state or country, the disposition of which was other than by acquittal or dismissal?

1. Respondent falsely answered "no" to question No. 10 of the license application which inquired as whether he had ever been convicted of a crime, when Respondent knew or should have known that he had been convicted of petit larceny in or about October, 1978 in the Bronx County Court.
2. Respondent falsely answered "no" to question No. 11 of the license application which inquired as to whether he had ever been charged with a crime which was disposed of by other than by acquittal

or dismissal, when Respondent knew or should have known that he had been charged with a crime in People of State of New York v. Gaston Da Costa, Bronx County Court, Court No. 820270/78.

## SPECIFICATIONS

### FIRST THROUGH THIRD SPECIFICATIONS

#### GROSS NEGLIGENCE

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(4) by reason of his practicing the profession of medicine with gross negligence on a particular occasion, in that Petitioner charges:

1. The facts in paragraphs A and A.3, and/or A and A.4.
2. The facts in paragraphs B and B.3.
3. The facts in paragraphs D and D.3.

### FOURTH THROUGH SIXTH SPECIFICATIONS

#### GROSS INCOMPETENCE

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(6) by reason of his practicing the profession of medicine with gross incompetence on a particular occasion, in that Petitioner charges the following:

4. The facts in paragraphs A and A.3, and/or A and A.4.
5. The facts in paragraphs B and B.3.
6. The facts in paragraphs D and D.3.

#### SEVENTH SPECIFICATION

#### NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(3) by reason of his practicing the profession of medicine with negligence on more than one occasion, in that Petitioner charges two or more of the following:

7. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, B and B.1, B and B.2, B and B.3, B and B.4, C and C.1, D and D.1, D and D.2, D and D.3, D and D.4, and/or E and E.1.

## EIGHTH SPECIFICATION

### INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(5) by reason of his having practiced the profession of medicine with incompetence on more than one occasion, in that Petitioner charges two or more of the following:

8. A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, B and B.1, B and B.2, B and B.3, B and B.4, C and C.1, D and D.1, D and D.2, D and D.3, D and D.4, and/or E and E.1.

## NINTH THROUGH TWELVETH SPECIFICATIONS

### INADEQUATE RECORDS

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(32) by reason of his having failed to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges the following:

9. The facts in paragraphs A and A.5.
10. The facts in paragraphs B and B.3.
11. The facts in paragraphs D and D.4.

## TWELVETH THROUGH FOURTEENTH SPECIFICATIONS

### FRAUDULENT PRACTICE

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(2) by reason of his having practiced the profession of medicine fraudulently, in that Petitioner charges the following:

12. The facts in paragraphs F and F.1, and/or F and F.2.
13. The facts in paragraphs G and G.1.
14. The facts in paragraphs H and H.1, and/or H and H.2.

FIFTEENTH THROUGH SEVENTEENTH SPECIFICATIONS

FILING A FALSE REPORT

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(21) by reason of his having willfully made or filed a false report, in that Petitioner charges the following:

15. The facts in paragraphs F and F.1, and/or F and F.2.
16. The facts in paragraphs G and G.1.
17. The facts in paragraphs H and H.1, and/or H and H.2.

EIGHTEENTH THROUGH TWENTIETH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(20) by reason of his having engaged in conduct in the profession of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

18. The facts in paragraphs F and F.1, and/or F and F.2.
19. The facts in paragraphs G and G.1.
20. The facts in paragraphs H and H.1, and/or H and H.2.

DATED: *May 31*, 2002  
Albany, New York

*Peter D. Van Buren*  
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. In particular, Respondent shall make progress notes in the hospital records of patients regarding his evaluation, findings, diagnosis or impressions and treatment.
7. Respondent shall enroll in and complete annually during the probation period two continuing education courses, one in the area of the interpretation of fetal heart monitor tracings and the second in the management of high-risk obstetrical patients. The course relating to the interpretation of fetal heart monitor tracings shall test the Respondent's knowledge of the subject. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the probation period, unless the Order specifies otherwise.

8. 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. During the first six months of monitoring, the practice monitor shall every two weeks, examine the records of all of the Respondent's hospital admissions and in-patient care, and in addition, all office records for patients who may be designated high-risk as defined in paragraph 10 below for that two week period. The practice monitor shall examine the consultation log which is described in paragraph 10 below. For those admissions which involved a birth or a stillbirth, the practice monitor will review and report on, as indicated below, the findings presented on any fetal heart tracing made. During the first 6 months of monitoring, in addition to reviewing medical records and the consultation log every two weeks as described above, the practice monitor shall visit Respondent's medical practice at least once a month. After the first six months of monitoring, the practice monitor shall visit Respondent's medical practice monthly and examine a selection (no fewer than 20) of records maintained by Respondent, to include all patients who may be designated high-risk as defined in paragraph 10 below, including patient hospital records (including fetal heart tracings), consultation log, 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 monthly, in writing, to the Director of OPMC for the first six months of monitoring; and thereafter quarterly.
  - 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.
9. Respondent shall be re-certified annually by the American Board of Obstetrics and Gynecology, or with the prior written approval of the Director of OPMC, shall be evaluated annually as to his skills and competency in his specialty by another program.

10. Respondent shall obtain appropriate consultations for high-risk patients in accordance with the regional perinatal agreement and no later than one week of Respondent becoming aware of the high-risk condition by whatever means. Respondent shall document in a consultation log, maintained by Respondent in a form approved by OPMC, the substance of the consultation, including the name of the consultant, the time and date of the consultation, and the consultant's recommendation. At a minimum, the following maternal and fetal conditions shall be considered high risk:
  1. Prior perinatal loss - fetal, neonatal death, or pre-term delivery.
  2. Recurrent low birth weight infants with weight greater than and including two (2) pounds but less than and including five and one half (5 ½) pounds.
  3. Diabetes, pre-existing or gestational.
  4. Chronic hypertension or renal disease requiring medications, blood pressure greater than 160/95, or deteriorating renal functions.
  5. Severe Pre-eclampsia/Eclampsia less than and including thirty-six (36) weeks.
  6. Cardiac Disease - Class III or IV, or serious arrhythmia.
  7. Unstable Endocrine Disease - e.g., hyperthyroidism.
  8. Malignancy.
  9. Septic or hemorrhagic shock.
  10. Trauma/abdominal emergencies requiring intensive care/surgical correction or requiring a procedure that may result in the onset of pre-term labor less than and including thirty-six (36) weeks.
  11. Multi-fetal gestation.
  12. Rh sensitization - titer greater than 1/8 and/or elevated delta O.D.
  13. Documented non-bacterial perinatal infection - e.g. rubella, CMV, hepatitis, varicella pneumonia.
  14. Documented fetal growth retardation or fetal anomaly compatible with life.
  15. Premature rupture of the membranes less than and including thirty-six (36) weeks.
  16. Pre-term labor, less than and including thirty-six (36) weeks, refractory to tocolysis.
  
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.