



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

PUBLIC

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

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

November 1, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

James M. Bell, M.D.
1930 Pre-Emption Road
Penn Yan, NY 14527

Re: License No. 202333

Dear Dr. Bell:

Enclosed please find Order #BPMC 04-245 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect November 8, 2004.

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,

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

Enclosure

cc: Richard S. Tubiolo, Esq.
Hirsch & Tubiolo, P.C.
100 Reynolds Arcade Building
16 East Main Street
Rochester, NY 14614

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

IN THE MATTER
OF
JAMES M. BELL, M.D.

CONSENT
ORDER

BPMC No. 04-245

Upon the application of (Respondent) JAMES M. BELL, 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: 10/27/04


MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

**IN THE MATTER
OF
JAMES M. BELL, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

JAMES M. BELL, M.D., representing that all of the following statements are true, states:

That on or about March 6, 1996, I was licensed to practice as a physician in the State of New York, and issued License No. 202333 by the New York State Education Department.

My current address is 1930 Pre-Emption Road, Penn Yan, New York 14527, 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 ten 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 Fourth Specification relating to the factual allegations contained in paragraphs A1, A3, A4 and A5 in full satisfaction of the charges against me, and agree to the following penalty:

1. Censure and Reprimand.
2. My practice of medicine shall be subject to conditions for a period of three years. The terms and conditions are attached hereto as "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.

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: 10/18/04 - James M. Bell
JAMES M. BELL, M.D.
RESPONDENT

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

DATE: 10/18/04


RICHARD S. TUBIOLO, ESQ.
Attorney for Respondent

DATE: 10/29/04


THOR B. EVANICK
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 10/26/04

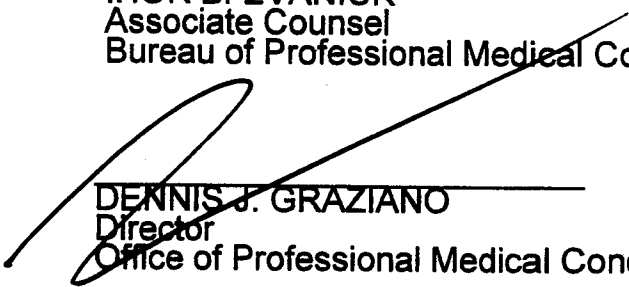

DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "B"

Conditions of Monitoring

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 the conditions of this order and may subject Respondent to an action pursuant to New York State Public Health Law §230 (10).
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 period of monitoring 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 monitoring period will resume and Respondent shall fulfill any unfulfilled monitoring terms and conditions.
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 condition of monitoring 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 a Board Order 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 medical practice for the duration of the monitoring 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 monitoring, 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 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 longer than the monitoring term herein.

Respondent shall cause the preceptor to:

- a. Develop and submit to the Director of OPMC for written approval a remediation plan, which addresses any 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 a Board Order proceeding, and/or any other such proceeding authorized by law, against Respondent.

IN THE MATTER
OF
JAMES MICHAEL BELL, M.D.

STATEMENT
OF
CHARGES

JAMES MICHAEL BELL, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 6, 1994, by the issuance of license number 202333 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A, a male born on November 29, 1914, (Patient names are listed in Appendix A) from approximately January 23, 1995 through December 18, 1997, at Respondent's medical office and at Soldiers and Sailors Hospital, Penn Yan, New York. Patient A presented at Respondent's medical office on January 23, 1995 with a history of coronary artery disease, hypertension and non insulin dependent diabetes. Patient A was admitted to Soldiers and Sailors Hospital on December 15, 1997 for postural hypotension related to significant anemia from chronic renal failure. Respondent treated Patient A from December 15, 1997 through December 18, 1997 until his death. Respondent's medical care of Patient A failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to obtain and/or document an adequate history of Patient A on January 23, 1995 or shortly thereafter.
 2. Respondent failed to perform and/or document an adequate physical examination of Patient A on January 23, 1995 or shortly thereafter.
 3. Respondent failed to adequately monitor Patient A's blood sugars during the course of his treatment of Patient A from January 23, 1995.

4. Respondent failed to order appropriate diagnostic tests during the course of his treatment of Patient A from January 23, 1995.
5. Respondent failed to perform a cardiac work up to address Patient A's cardiac status which included a history of coronary artery disease, hypertension and myocardial infarction.
6. Respondent failed to order appropriate consultations and/or follow up on those consultations.
7. On or about December 15, 1997 Respondent failed to obtain and/or document an adequate history.
8. On or about December 15, 1997 Respondent failed to perform and/or document an adequate physical examination of Patient A.
9. On or about December 15, 1997 Respondent failed to adequately review and/or interpret the EKG results which indicated a myocardial infarction.
10. On or about December 15, 1997, Respondent failed to properly treat Patient A's cardiac status.
11. On or about December 15, 1997, Respondent failed to properly treat Patient A's pulmonary status.
12. On or about December 15, 1997, Respondent failed to properly address and treat Patient A's metabolic acidosis.
13. On or about December 15, 1997, Respondent failed to properly assess Patient A's blood pressure.
14. Respondent failed to maintain a record which accurately reflected the evaluation and treatment of Patient A.

- B. Respondent provided medical care to Patient B during the period including September 27, 2000 to October 19, 2000 at his office, the Soldiers and Sailors Memorial Hospital, and the Homestead associated with Soldiers and Sailors Memorial Hospital. Respondent's care of Patient B failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to obtain and/or record an adequate history.
 2. Respondent failed to obtain and/or record an adequate physical.
 3. Respondent failed to adequately evaluate and/or diagnose organic brain disorder.
 4. Respondent failed to perform and/or order adequate diagnostic tests.
 5. Respondent failed to establish and/or document an adequate treatment plan.
 6. Respondent inappropriately prescribed both major and minor neurolyptic drugs.
 7. Respondent inappropriately discontinued antibiotic therapy.
 8. Respondent failed to obtain appropriate consultations.
 9. Respondent failed to maintain a record which accurately reflected the evaluation and treatment of Patient B.
- C. Respondent provided medical care to Patient C during the period including March 19, 2001 to March 21, 2001 at his office and Soldiers and Sailors Memorial Hospital. Respondent's care of Patient C failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to perform and/or order appropriate diagnostic tests in a timely manner.
 2. Respondent failed to evaluate and/or diagnose bacterial meningitis in a timely manner.

3. Respondent failed to adequately treat and/or manage bacterial meningitis in a timely manner.
4. Respondent failed to provide empirical antibiotic therapy to treat and/or manage the possibility of bacterial meningitis.

SPECIFICATION OF CHARGES

FIRST THROUGH THIRD SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

1. The facts set forth in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, A and A.9, A and A.10, A and A.11, A and A.12, A and A.13, and/or A and A.14.
2. The facts set forth in paragraphs B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, and/or B and B.8.
3. The facts set forth in paragraphs C and C.1, C and C.2, C and C.3, and/or C and C.4.

FOURTH 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:

4. The facts set forth in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, A and A.9, A and A.10, A and A.11, A and A.12, A and A.13, A and A.14, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8, C and C.1, C and C.2, C and C.3, and/or C and C.4.

FIFTH THROUGH SEVENTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

5. The facts set forth in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, A and A.9, A and A.10, A and A.11, A and A.12, A and A.13, and/or A and A.14.
6. The facts set forth in paragraphs B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, and/or B and B.8.
7. The facts set forth in paragraphs C and C.1, C and C.2, C and C.3, and/or C and C.4.

EIGHTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing 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:

8. The facts set forth in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, A and A.9, A and A.10, A and A.11, A and A.12, A and A.13, A and A.14, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8, C and C.1, C and C.2, C and C.3, and/or C and C.4.

NINTH SPECIFICATION

RECORD KEEPING

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

9. The facts set forth in paragraphs A and/or A.14.

TENTH SPECIFICATION

RECORD KEEPING

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

10. The facts set forth in paragraphs B and/or B.9.

DATED: August 6, 2004
Albany, New York



BRIAN M. MURPHY
Chief Counsel
Bureau of Professional
Medical Conduct