



**Department
of Health**

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 29, 2022

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Richard S. Aguirre, M.D.



Re: License No. 213119

Dear Dr. Aguirre:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 22-265. This order and any penalty provided therein goes into effect January 5, 2023.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,


Michael S. Jakubowski, M.D.
Interim Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Michael Scott-Kristansen, Esq.
Barclay Damon, LLP.
2000 Five Star Bank Plaza
100 Chestnut Street
Rochester, New York 14604

**IN THE MATTER
OF
RICHARD S. AGUIRRE, M.D.**

**CONSENT
ORDER**

Upon the application of (Respondent) RICHARD S. AGUIRRE, 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 Consent Order shall be effective upon issuance by the Board, either

by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR

upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 12/28/2022


THOMAS T. LEE, 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
RICHARD S. AGUIRRE, M.D.**

CONSENT
AGREEMENT

RICHARD S. AGUIRRE, M.D., represents that all of the following statements are true:

That on or about February 11, 1999, I was licensed to practice as a physician in the State of New York and issued License No. 213119 by the New York State Education Department.

My current address is [REDACTED], and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I do not contest the Statement of Charges, in full satisfaction of the charges against me, and agree to the following penalty:

- Pursuant to New York Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for thirty-six months, with the entire thirty-six month period stayed.
- Pursuant to New York Pub. Health Law § 230-a(9), I shall be placed on probation for thirty-six 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, by making this application, stipulates that the Director of the Office of Professional Medical Conduct ("Director", "OPMC"), at the conclusion of the initial thirty-six months of probation, shall be authorized to continue the period of probation including any or all terms set forth in attached Exhibit "B". The Director of OPMC ("Director") shall be authorized to continue the probation for two additional periods of thirty-six months or less and not to exceed a total of seventy-two months after completion of the initial thirty-six month probation period. Respondent stipulates that the decision to continue the period of probation shall be in the Director of OPMC's sole discretion as the Director deems necessary based upon all relevant facts and circumstances then known to OPMC, including but not limited to, those related to the OPMC investigation of Respondent, Respondent's compliance with the terms of this Order, and Respondent's practice in the future, as deemed by the Director to be necessary to protect

the public health. The Director shall be authorized to continue all or some of the probation terms contained in the attached Exhibit "B". The Respondent's compliance with the terms of this Consent Order and/or any Director's Modification Order is not a basis for the Respondent to be released from any current or prospective period of probation but may be considered by the Director in their sole discretion as to whether to continue the probation period. In the event the Director of OPMC continues the period of probation, the Director shall issue a Director's Modification Order that will detail the duration of the continued probation period and the probation terms that shall be continued. The Director's Modification Order(s) shall not constitute additional discipline against the Respondent and the Director's Modification Order(s) shall specify the same. The Director's Modification Order(s) shall take effect upon issuance by the Director, either by mailing a copy of the Director's Modification Order(s) by first class mail to the Respondent at the address in this Consent Agreement, or to the Respondent's attorney by certified mail, or upon facsimile transmission to the Respondent or the Respondent's attorney, whichever is first. The Director's Modification Order(s) and all attached Exhibits shall be public documents, with only patient identities or other confidential information, if any, redacted. As public documents, the Director's Modification Order(s) may be posted on the Department of Health's website. Respondent may submit written material to OPMC for the Director's consideration at least sixty days before the

conclusion of the Respondent's current probation period. The Director, or their designee, shall notify the Respondent in writing of the Director's decision regarding continuation of the probation period prior to the issuance of the Director's Modification Order(s) and within thirty days of receiving the Respondent's submission, if any.

That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a.

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall: report to the Department all information required by the Department to develop a

public physician profile for the licensee; continue to notify the Department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update the Licensee's profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to the Licensee's physician profile information either electronically using the Department's secure web site or on forms prescribed by the Department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the Department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and ensure that this 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, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent 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 Consent Order shall constitute misconduct as defined by N.Y. Educ. 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 N.Y. Pub. Health Law.

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

The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities or other confidential information, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 12/19/22



RICHARD S. AGUIRRE, M.D.
RESPONDENT

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

DATE: December 20, 2022



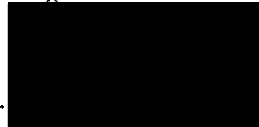
MICHAEL SCOTT-KRISTANSEN, ESQ.
Attorney for Respondent

DATE: Dec. 21, 2022



NATHANIAL WHITE
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 12/28/2022



For SHELLY WANG BANDAGO
Director
Office of Professional Medical Conduct

EXHIBIT A

IN THE MATTER

OF

RICHARD S. AGUIRRE, M.D.

STATEMENT

OF

CHARGES

RICHARD S. AGUIRRE, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 11, 1999 by the issuance of license number 213119 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (patient is identified in Appendix "A", attached), a female patient aged forty-four when treatment began, at Lakeville Family Medicine in Lakeville, New York dating back at least until September 9, 2005 through at least July 24, 2020. Respondent provided primary medical care to Patient A including the treatment of fibromyalgia, chronic pain and attention deficit hyperactivity disorder. Respondent's medical care of Patient A deviated from accepted standards of care as follows:

1. Respondent failed to maintain professional physician-patient boundaries with Patient A.
2. Respondent prescribed medications to Patient A in the context of a physician-patient relationship that exceeded professional boundaries.
3. Respondent failed to maintain adequate treatment records for Patient A.

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:

1. Paragraphs A and A.1, A and A.2, and/or A and A.3.

SECOND SPECIFICATION

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 evaluation and treatment of the patient, as alleged in the facts of:

2. Paragraph A and A.3.

DATE: December 21, 2022
Albany, New York


JEFFREY J. CONKLIN
Deputy Director
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 N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
- 2) 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.
- 3) 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].
- 4) The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 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 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall 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 as are necessary to protect the public health.
- 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, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 6) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.

- 7) 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.
- 8) Respondent shall enroll in and successfully complete continuing education as directed by the Office of Professional Medical Conduct, subject to the Director of OPMC's prior written approval.
- 9) Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a 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.

CHAPERONE

- 10) Respondent shall, in the course of practicing medicine in New York State, examine and/or treat any female patient only in the presence of a chaperone. The chaperone shall be a licensed or registered health care professional or other health care worker, shall not be a family member, personal friend, or be in a professional relationship with Respondent which could pose a conflict with the chaperone's responsibilities. The chaperone shall be proposed by Respondent and subject to the written the approval of the Director of OPMC.
- 11) Prior to the approval of any individual as chaperone, Respondent shall cause the proposed chaperone to execute and submit to the Director of OPMC an acknowledgment of the chaperone's agreement to undertake all of the responsibilities of the role of chaperone. Said acknowledgment shall be made upon a form provided by and acceptable to the Director. Respondent shall provide the chaperone with a copy of the Order and all of its attachments and shall, without fail, cause the approved chaperone to:
 - a) Report quarterly to OPMC regarding the chaperoning of Respondent's practice.
 - b) Report within 24 hours any failure of Respondent to comply with the Order, including, but not limited to, any failure by Respondent to have the chaperone present when required, or any inappropriate conduct, whether verbal or physical, by Respondent in the presence of any patient.
 - c) Confirm the chaperone's presence at each and every examination and treatment of a female patient by Respondent, by placing the chaperone's name, title and date in the patient record for each and every visit, and by maintaining a separate log, kept in the chaperone's own possession and

signed by the chaperone, listing the patient name and date of visit for each and every patient visit chaperoned.

- d) Provide copies of the log described in paragraph c, above, to OPMC at least quarterly and also immediately upon the Director's request.