



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

William P. Dillon, M.D.
Chair

Denise M. Bolan, R.P.A.
Vice Chair

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

May 13, 2002

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Michael Douglas Cunningham, M.D.
P.O. Box 505
Glen Spey, NY 12737

RE: License No. 200908

Dear Dr. Cunningham:

Enclosed please find Order #BPMC 02-138 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect May 13, 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: Wilfred T. Friedman, Esq.
Friedman and Mahdavian, P.C.
36 West 44th Street, Suite 1205
New York, NY 10036

*file
Cunningham*

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

**IN THE MATTER
OF
MICHAEL DOUGLAS CUNNINGHAM, M.D.**

**CONSENT
ORDER**

BPMC No. 02-138

Upon the application of (Respondent) MICHAEL DOUGLAS CUNNINGHAM, 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: 5/10/02

William P. Dillon, M.D.

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
MICHAEL DOUGLAS CUNNINGHAM, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

MICHAEL DOUGLAS CUNNINGHAM, M.D., representing that all of the following statements are true, deposes and says:

That on or about September 26, 1995, I was licensed to practice as a physician in the State of New York, and issued License No.200908 by the New York State Education Department.

My current address is ^{P.O. Box 505} ~~505 Loch Ada Road~~, Glen Spey, N.Y., 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 do not contest the First and Second Specifications, in full satisfaction of the charges against me, and agree to the following penalty:

My license shall be suspended for an indefinite period but no less than twelve months. I shall be subject to a condition that I comply with Exhibit "C," "Guidelines For Closing a Medical Practice Following a Revocation, Surrender or Suspension (Of 6 Months or More) of a Medical License," attached hereto." Upon compliance with all conditions of this Order, but no

sooner than twelve months from the effective date of this order, I may petition the Board for a Modification Order terminating or modifying the indefinite suspension of my license, as deemed appropriate by the Board.

I understand and agree:

That any Modification Order the Board may issue, in the exercise of its reasonable discretion, may include terms of probation, and/or further conditions on my practice.

That the Board will exercise its reasonable discretion upon my petition for a Modification Order through a Committee on Professional Conduct, after a proceeding in which I have met a burden of proof and persuasion as further set forth in attached Exhibit "B".

That the Committee's exercise of discretion shall not be reviewable by the Administrative Review Board.

I further agree that the Consent Order shall impose the following conditions:

That, I shall return any and all official New York State prescriptions to the Bureau of Controlled Substances, and I shall surrender my Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within thirty days of the effective date of this Order. Further, within

thirty days of returning said prescriptions and surrendering said registration, I shall provide the Director of OPMC ("Director") with written evidence, satisfactory to the Director, that I have so complied with this condition.

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).

If I am charged with professional misconduct in the future, I hereby stipulate and agree to the admission into evidence at such proceeding, during the Department's case-in-chief, of this Application and Order, and/or related Modification Orders at the sole discretion of the Department (Petitioner).

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 4/24/02



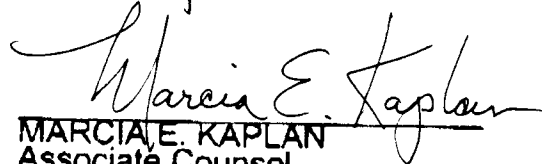
MICHAEL DOUGLAS CUNNINGHAM, M.D.
RESPONDENT

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

DATE: 25 April 02


WILFRED T. FRIEDMAN, ESQ.
Attorney for Respondent

DATE: April 30, 2002


MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: May 7, 2002


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
MICHAEL DOUGLAS CUNNINGHAM, M.D.

STATEMENT
OF
CHARGES

MICHAEL DOUGLAS CUNNINGHAM, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 26, 1995, by the issuance of license number 200908 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. During various periods in and before 2001, Respondent was dependent on or a habitual user of alcohol and drugs, including opiates.
- B. During various periods in and before 2001, Respondent inappropriately prescribed controlled substances for Patient A.

SPECIFICATION OF CHARGES**FIRST SPECIFICATION****BEING A HABITUAL USE OF ALCOHOL
OR BEING DEPENDENT UPON DRUGS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8) by being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice as alleged in the facts of the following:

1. Paragraph A.

SECOND 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:

2. Paragraph B.

DATED: March , 2002
New York, New York

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

1. Respondent's indefinite license suspension shall be modified, and the active suspension of his license terminated, only upon a showing by Respondent to the satisfaction of a Committee on Professional Conduct of the State Board for Professional Medical Conduct (henceforth "Committee"), and upon the Committee's determination, that: Respondent has successfully complied with or completed a course of therapy and ongoing evaluation; Respondent is no longer incapacitated for the practice of the Profession; and Respondent is both fit and clinically competent to practice the Profession.

2. Upon Respondent's written request, a Committee shall meet to hear and evaluate Respondent's showing, as referred to in paragraph 1 above, in support of a Modification Order. The Board will make reasonable attempts to convene a Committee within 90 days after Respondent's request. That request shall not be perfected until the Director of the Office of Professional Medical Conduct receives all the documents Respondent is required to provide, as set forth in paragraph 3 below. The procedural nature of this proceeding shall be determined by the State Board for Professional Medical Conduct, within the discretion of the Director of the Office of Professional Medical Conduct upon consultation with Counsel, Bureau of Professional Medical Conduct. Proceedings before said Committee shall *not* be in the nature of a *hearing* pursuant to New York Public Health Law §230, but shall instead be informal and intended only to address any and all facts, evidence, information, circumstances, or issues that relate to the advisability of terminating the suspension of Respondent's license. The Committee shall be given access to evidence including but not limited to:

- a. Any and all evidence of Respondent's compliance with the Conditions imposed.
- b. Any evidence that the Director of the Office of Professional Medical Conduct or Counsel, Bureau of Professional Medical Conduct, deems appropriate.

3. At the time that Respondent requests that a Committee meeting be scheduled pursuant to paragraph 2, he shall provide the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299, with the following:

- a. The signed acknowledgment from the supervising physician referred to in paragraph 5e.
- b. The signed acknowledgment from the health care professional referred to in paragraph 5f.
- c. The signed acknowledgment from the monitor referred to in paragraph 5b.
- d. Certified true and complete copies of records of all evaluation and treatment relating to Respondent's impairment, whether that evaluation and treatment occurred prior to or during the time this suspension is in effect. These records shall include documentation of the results of all tests conducted to evaluate Respondent's fitness and his clinical competence to practice the Profession. Such records shall include, but not be limited to, documentation of his participation in the program(s) of the Committee for Physicians' Health of the New York State Medical Society, or other equivalent program(s).

- e. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
- f. A current in-depth chemical dependency evaluation by a health care professional specializing in chemical dependency and an independent current psychiatric evaluation by a board certified psychiatrist.
- g. Respondent's attendance at, participation in, and cooperation with an interview conducted by personnel of OPMC, upon the request of the Director.
- h. At the direction of the Director, a report of a complete clinical competency assessment performed by a program for such assessment, such program to be proposed by Respondent and subject to the prior written approval of the Director of OPMC.

Provision of the aforesaid documents will not alone constitute a showing that Respondent is no longer incapacitated for active practice of the Profession.

4. At least fourteen days prior to the scheduled date of the proceeding referred to in paragraph 2, Respondent shall provide OPMC with the following:

- a. Certified true and complete copies of records of any and all treatment in a residential rehabilitation or day-treatment program or intensive treatment in an out-patient service and any other psychiatric, psychological, and/or mental health treatment, evaluation, and/or testing, whether in an out-patient, in-patient, office, or consultation setting.
- b. Evidence of compliance with the terms of a continuing after-care out-patient treatment plan that addresses the major problems associated with Respondent's illness.
- c. Evidence that Respondent has maintained adequate knowledge and competence to practice the Profession. Such evidence shall include documentation of continuing medical education and, if so requested by the Director of OPMC, a report of an independent evaluation of Respondent's medical knowledge and competence.

Submission of the aforesaid evidence shall not, alone, constitute a showing that Respondent is no longer incapacitated for the active practice of the Profession.

5. If the Chairperson of the Committee issues an order (Order) finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice the Profession, therefore staying the suspension of Respondent's license, the Order shall further impose a period of probation pursuant to New York Public Health Law §230-a, during which Respondent's practice of the Profession be subject to conditions imposed. Respondent's practice shall be subject to such conditions for a period of no less than five years. The minimum conditions shall include:

- a. Respondent shall remain drug and alcohol free.
- b. Respondent's sobriety will be monitored by a health care professional, proposed by Respondent and approved in writing by the Director of OPMC, in accordance with the conditions imposed by the Order. Said monitor shall acknowledge his/her willingness to comply with the monitoring by executing the acknowledgment provided by OPMC, and referred to in paragraph 3c.

- i. Said monitor shall be familiar with Respondent's history of impairment, with this Consent Agreement and Order, and with the conditions of practice imposed by the Order. Said monitor shall not be Respondent's treating physician.
 - ii. Said monitor shall see Respondent at least twice during a quarter.
 - iii. Said monitor shall direct Respondent to submit to unannounced tests of my blood, breath, and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time such a test is refused by me or is positive.
 - iv. Said monitor shall report to OPMC any noncompliance with the imposed conditions.
 - v. Said monitor shall not be a personal friend of Respondent's.
 - vi. Said monitor shall submit to OPMC quarterly reports either certifying Respondent's compliance, or detailing Respondent's failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
- c. Respondent shall be required to comply with the terms of a continuing after-care treatment plan that addresses the major problems associated with his illness.
- d. At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board certified psychiatrist or other licensed mental health practitioner designated by the Director. Said practitioner shall report to the Director regarding Respondent's condition and his fitness or incapacity to practice the Profession.
- e. Respondent shall be supervised in Respondent's practice by a licensed physician, proposed by Respondent and approved in writing by the Director of OPMC, in accordance with the conditions contained in or annexed to the Order. Said supervising physician shall be familiar with Respondent's history of substance abuse and with the Order and its conditions. Said supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. Said supervising physician shall be in a position regularly to observe and assess Respondent's practice. Said supervising physician shall acknowledge his/her willingness to comply with the supervision by executing the acknowledgment provided by OPMC.
- i. Said supervising physician shall submit to OPMC quarterly reports regarding the quality of Respondent's practice, any unexplained absences from work and certifying his compliance or detailing his failure to comply with

- ii. each condition imposed.
 - ii. Said supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.
 - f. Respondent shall continue in treatment with a health care professional, proposed by him and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
 - i. Respondent's treating health care professional or program shall submit to OPMC quarterly reports certifying that Respondent is complying with the treatment.
 - ii. Said treating health care professional shall report to OPMC immediately if Respondent is noncompliant with his treatment plan or if he demonstrates any significant pattern of absences.
 - iii. Said treating health care professional shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgment provided by OPMC.
- 6. The terms set out in paragraph 5 shall be the minimum probation terms, related to Respondent's fitness to practice, to be imposed on his practice upon restoration of his license, and that other terms may be added by the Committee at the time of license restoration, and that the costs of complying with all such terms will be Respondent's responsibility. Any failure by Respondent to comply with the conditions imposed upon his practice at the time of license restoration, may result in disciplinary action being brought against him charging professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law Section 6530(29). That section defines professional misconduct to include "violating any... condition... imposed on the licensee pursuant to section two hundred thirty of the public health law."
- 7. Upon any denial of license restoration made by the Committee, Respondent shall not again request convening of a Committee until a minimum period of nine months has elapsed since such denial.
- 8. In addition to the terms set out in paragraph 5 and any other terms imposed by the Committee upon restoration of Respondent's license, he shall also be subject to the following standard terms of probation:
 - a. 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).
 - b. 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.
- c. 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.
 - d. 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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
 - e. 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.
 - f. 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.
 - g. Respondent shall maintain complete, 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.
 - h. Respondent shall enroll in and complete a continuing education program, including but not limited to the areas of appropriate prescribing of controlled substances and medical ethics. 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.
 - i. 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.

provides health care services.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the Order's effective date.

10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four (4) years, under Section 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under Section 230-a of the Public Health Law.

EXHIBIT "C"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more) OF A MEDICAL LICENSE

1. Respondent shall immediately cease and desist the practice of medicine in compliance with the terms of the Consent Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within fifteen (15) days of the Consent Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty (30) days of the Consent Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty (30) days of the Consent Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (3) years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.
5. Within fifteen (15) days of the Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within fifteen (15) days of the Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at his practice location, Respondent shall dispose of all medications.
7. Within fifteen (15) days of the Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee