



*Public*  
**New York State Board for Professional Medical Conduct**  
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Dr.

*Richard F. Daines, M.D.*  
*Commissioner*  
*NYS Department of Health*  
*James W. Clyne, Jr.*  
*Executive Deputy Commissioner*  
*Keith W. Servis, Director*  
*Office of Professional Medical Conduct*

*Kendrick A. Sears, M.D.*  
*Chair*  
*Carmela Torrelli*  
*Vice Chair*  
*Katherine A. Hawkins, M.D., J.D.*  
*Executive Secretary*

February 16, 2010

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

David W. O'Connell, M.D.

Redacted Address

Re: License No. 138181

Dear Dr. O'Connell:

Enclosed is a copy of Modification BPMC #04-33 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect February 23, 2010.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order and return it to the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299**

Sincerely,

Redacted Signature

Katherine A. Hawkins, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

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

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IN THE MATTER  
OF  
DAVID W. O'CONNELL, M.D.

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MODIFICATION  
ORDER

BPMC No. #04-33

Upon the proposed Application for a Modification Order of **DAVID W. O'CONNELL, M.D.**, (Respondent), that is made a part of this Modification Order, it is agreed and

ORDERED, that the attached Application and its terms are adopted and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either by mailing, by first class mail, a copy of the Modification Order to Respondent at the address in the attached Application or by certified mail to Respondent's attorney or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 2-12-2010

Redacted Signature

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KENDRICK A. SEARS, M.D.  
Chair  
State Board for Professional  
Medical Conduct

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

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IN THE MATTER  
OF  
DAVID W. O'CONNELL, M.D.

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APPLICATION FOR  
MODIFICATION ORDER

DAVID W. O'CONNELL, M.D., (Respondent) being duly sworn deposes and says:

That on or about May 25, 1979, I was licensed to practice medicine in the State of New York, having been issued license number 138181 by the New York State Education Department.

My current address is Redacted Address

I am currently subject to Consent Order BPMC No. 04-33, (hereinafter "Original Order"), annexed hereto, made a part, hereof, and marked as Exhibit 1, that was issued on February 16, 2004.

I have not practiced medicine in New York state in many years, and I do not intend to return to practice medicine in New York state, as I have retired from the practice of medicine.

I apply, hereby, therefore, to the State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: to delete the paragraph in the Original Order that states:

"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 a licensee in New York State; and"

substituting for the above paragraph:

" Respondent shall never practice medicine in New York state as a physician, activate his registration to practice medicine as a physician in New York state or seek to reapply for a license to practice medicine as a physician in New York state."

The Modification Order to be issued will not constitute a new disciplinary action against me, but will substitute the proposed language for the above described language in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance of the Board of this Application, I knowingly waive the right to contest the Original Order or the Modification Order for which I apply, both administratively and judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion to either enter into the proposed Agreement and Modification 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.

AFFIRMED:

DATED:

Feb 4, 2010

Redacted Signature

DAVID W. O'CONNELL, M.D.  
Respondent

The undersigned agree to the attached Application of Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 11 February 2010

Redacted Signature

ROBERT BOGAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 2/11/10

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

EXHIBIT 1



***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

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

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

PUBLIC

February 18, 2004

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

David W. O'Connell, M.D.

Redacted Address

Re: License No. 138181

Dear Dr. O'Connell:

Enclosed please find Order #BPMC 04-33 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect February 25, 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,

Redacted Signature

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

Executive Secretary

Board for Professional Medical Conduct

**Enclosure**

cc: Harold Eisenstein, Esq.  
Law Office of William P. Seamon  
1168-70 Troy Schenectady Rd.  
P.O. Box 12414  
Albany, NY 12212-2414

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

IN THE MATTER  
OF  
DAVID W. O'CONNELL, M.D.

CONSENT  
ORDER

BPMC No. 04-33

Upon the application of (Respondent), David W. O'Connell, 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: 2/16/04

Redacted Signature

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

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

IN THE MATTER  
OF  
DAVID W. O'CONNELL, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

David W. O'Connell, M.D., representing that all of the following statements are true, deposes and says:

That on or about May 25, 1979, I was licensed to practice as a physician in the State of New York, and issued License No. 138181 by the New York State Education Department.

My current address is Redacted Address, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with two specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I plead no contest to the First Specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

Pursuant to §230-a(2) of the Public Health Law, my license to practice medicine in the State of New York shall be suspended for a period of 60 months, said suspension to be stayed and credit given to me for 30 days suspension from my employment previously ordered by the Department of Corrections and already served.



Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of 60 months, subject to the terms set forth in attached Exhibit "B."

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

That Respondent shall maintain 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: January 15, 2004

Redacted Signature

\_\_\_\_\_  
DAVID W. O'CONNELL, M.D.,  
RESPONDENT

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

WILLIAM P. SEAMON, ESQ.

DATED: 1/16/04

Redacted Signature

By:

HAROLD EISENSTEIN, ESQ. of Counsel  
Attorney for Respondent

DATED: 1/26/04

Redacted Signature

JEFFREY J. CONKLIN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATED: 02/12/04

Redacted Signature

✓ DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

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

IN THE MATTER  
OF  
DAVID W. O'CONNELL, M.D.

STATEMENT  
OF  
CHARGES

David W. O'Connell, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 25, 1979, by the issuance of license number 138181 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A (hereinafter identified in Appendix A), at the Wende Correctional Facility, Alden, New York, from May 4, 2002, through May 16, 2002, for, among other things, sickle cell disease, which caused intermittent pain crises, hypertension, and end stage renal disease. Respondent's care and treatment of Patient A failed to meet accepted standards of care in that:
1. Respondent failed to appropriately evaluate Patient A's condition to determine the cause of increasing pain said patient was experiencing;
  2. Respondent failed to consider differential diagnoses for the cause of Patient A's increasing pain, including infection, pneumonia, and/or acute chest syndrome;
  3. Respondent failed to appropriately evaluate Patient A to determine the cause of worsening oxygen desaturation, of acute onset and unknown etiology, said patient was experiencing;

4. Respondent failed to consider differential diagnoses for the cause of Patient A's oxygen desaturation, including pneumonia, pulmonary embolism, acute chest syndrome, and/or pneumothorax;
5. Respondent failed to treat Patient A for the worsening oxygen desaturation;
6. Respondent failed to appropriately examine, evaluate and treat Patient A from May 12, 2002, through May 16, 2003;
7. Respondent failed to order appropriate and indicated laboratory tests and imaging studies to diagnose the cause of Patient A's terminal illness;
8. Respondent failed to appropriately evaluate and treat Patient A's sickle cell disease;
9. Respondent failed to recognize the significance of the acute change in Patient A's pattern of pain and requirement for analgesics;
10. Respondent failed to appropriately evaluate and treat Patient A's end stage renal disease where said patient had missed two required daily dialysis sessions;
11. Respondent failed to appropriately investigate the reasons why Patient A refused two hemodialysis sessions;
12. Respondent failed to recognize the significance of Patient A's decision to refuse two hemodialysis sessions;
13. Respondent failed to consult with Patient A's Nephrologist as was indicated and/or to refer said patient for an appropriate consultation with a specialist;

14. Respondent failed to examine evaluate and treat Patient A, despite said patient's deteriorating and life threatening medical condition, and the prescription of multiple narcotic and non-narcotic analgesics; and
15. Respondent failed to transfer Patient A to a hospital for evaluation and treatment of said patient's deteriorating condition;

- B. Respondent provided medical care to Patient B (hereinafter identified in Appendix A attached hereto) on December 20, 1999, at Wende Correctional Facility, for, among other things, the acute onset of burning midsternal chest pain. Patient B had a history of an acute myocardial infarction two years prior. Respondent's care and treatment of Patient B failed to meet accepted standards of medical care in that:
1. Respondent failed to appropriately evaluate and treat Patient B's condition;
  2. Respondent failed to recognize that Patient B's midsternal chest pain was a sign of myocardial ischemia and unstable angina;
  3. Respondent failed to recognize the abnormalities on Patient B's EKG, including an old inferior wall myocardial infarction and ischemic changes;
  4. Respondent failed to transfer Patient B to an acute care hospital for evaluation and treatment of myocardial ischemia, unstable angina, and acute myocardial infarction; and
  5. Respondent inappropriate treated Patient B's coronary artery disease by the administration of Tagamet, a medication used for the treatment of conditions of a gastrointestinal etiology.

**SPECIFICATIONS OF CHARGES**

**FIRST SPECIFICATION**

(Negligence on More than One Occasion)

Respondent is charged with professional misconduct under New York Education Law Section 6530(3) by reason of his having practiced the profession with negligence on more than one occasion, in that Petitioner charges the following:

1. The facts as alleged in paragraphs A and A1, A and A2, A and A3, A and A4, A and A5, A and A6, A and A7, A and A8, A and A9, and/or A and A10, A and A11, A and A 12, A and A13, A and A14, and/or A and A15; B and B1, B and B2, B and B3, B and B4, and/or B and B5.

DATED: January 22, 2004  
Albany, New York

Redacted Signature

Peter D. Van Buren  
Deputy Counsel  
Bureau of Professional  
Medical Conduct



## EXHIBIT "B"

### Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall maintain 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.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (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.
7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.



## **PRACTICE MONITOR**

9. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
  - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
  - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
  - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

## **CLINICAL COMPETENCY ASSESSMENT**

10. Respondent shall obtain a clinical competency assessment performed by a program for such assessment as directed by the Director of OPMC. Respondent shall cause a written report of such assessment to be provided 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 term of probation shall not be satisfied in the absence of actual receipt, by the Director, of such documentation, and any failure to satisfy shall provide a basis for a Violation of Probation proceeding.
11. 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 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 "12".

## **PERSONALIZED CONTINUING MEDICAL EDUCATION**

12. 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 probationary term herein.
  - a. Respondent shall cause the preceptor to:
    1. Submit reports on a quarterly basis to OPMC certifying whether Respondent is fully participating in the personalized continuing medical education program;
    - i. Report immediately to the Director of OPMC if Respondent withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by Respondent; and
    - ii. At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by Respondent toward remediation of all identified deficiencies.
13. 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.