



***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

February 18, 2004

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

Nelson Cabagnet, M.D.  
1 Saxon Lane  
West Nyack, NY 10994

Re: License No. 223004

Dear Dr. Cabagnet:

Enclosed please find Order #BPMC 04-35 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,

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

Enclosure

cc: James D. Lantier, Esq.  
Smith, Sovik, Kendrick & Sugnet, P.C.  
250 S. Clinton Street, Suite 600  
Syracuse, NY 13202-1252

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

IN THE MATTER  
OF  
NELSON CABAGNOT, M.D.

CONSENT  
ORDER

BPMC No. 04-35

Upon the application of (Respondent) Nelson Cabagnet, 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

  
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  
NELSON CABAGNOT, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

Nelson Cabagnet, M.D., representing that all of the following statements are true, states:

That on or about October 10, 2001, I was licensed to practice as a physician in the State of New York, and issued License No. 223004 by the New York State Education Department.

My current address is 1 Saxon Lane, West Nyack, NY 10994, 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 eight 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 specification in full satisfaction of the charges against me, and agree to the following penalty:

My license to practice medicine shall be permanently limited, pursuant to §230-a of the Public Health Law, to preclude the

practice of emergency medicine. I shall be placed on probation for a period of three years. The terms of probation are attached in Exhibit B.

I further agree that the Consent Order for which I hereby apply 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; and

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 1/28/04

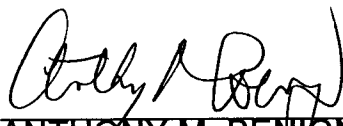
  
\_\_\_\_\_  
NELSON CABAGNOT, M.D.  
RESPONDENT

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

DATE: 1/30/04

  
JAMES D. LANTIER, ESQ.  
Attorney for Respondent

DATE: 2/2/04

  
ANTHONY M. BENIGNO  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 2/12/04

  
DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

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

IN THE MATTER  
OF  
NELSON CABAGNOT, M.D.

STATEMENT  
OF  
CHARGES

Nelson Cabagnot, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 10, 2001, by the issuance of license number 223004 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent treated Patient A, a 30 year old female (patient names are listed in the Appendix) on August 10, 2002 in the Emergency Department of Chenango Memorial Hospital, Norwich, New York. Patient A presented to the Emergency Department after being thrown from her horse complaining of left shoulder pain, pain on deep inhalation, nausea, back pain and rib pain. Respondent's medical care of Patient A failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to rule out intra-abdominal injury prior to his plan to discharge the patient.
  2. Respondent failed to adequately and/or timely address the patient's loss of body fluids.
  3. Respondent failed to timely send blood work for type and cross matching in anticipation of surgery.



B. Respondent treated Patient B, an eight month old male, on October 29, 2002 in the Emergency Department of Chenango Memorial Hospital, Norwich, New York. Patient B presented to the Emergency Department with a fever of 102.7 while on antibiotics for the past week. Patient B's history included pyloric stenosis surgery three weeks previously and recent otitis. Respondent's medical care of Patient B failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to rule out more serious conditions as part of his differential diagnosis.
2. Respondent failed to obtain a urine sample by catheterization.
3. Respondent failed to change the antibiotic pending blood culture and sensitivity results.
4. Respondent failed to admit Patient B.
5. Respondent failed to obtain a pediatric consultation.

C. Respondent treated Patient C, a 32 year old female, on February 11, 23, and 25, 2002 in the Emergency Department of Chenango Memorial Hospital, Norwich, New York. Patient C presented to the Emergency Department on February 11, 2002 with complaints of chest pain, weakness in her left leg and decreased range of motion in her left arm. The previous night she had chest pain radiating to her left back, difficulty walking and drooping on the left side of her face. Respondent's medical care of Patient C failed to meet accepted standards of medical care in the following respects:

1. On February 11, 2002 Respondent should have admitted Patient C to rule out possible cerebrovascular accident and/or manage her high glucose values.
2. On February 23, 2002 Respondent failed to admit patient C until her

diabetes mellitus was better controlled. Respondent failed to diagnose and treat her urinary tract infection.

3. On February 25, 2002 Respondent failed to admit patient C until her diabetes mellitus was better controlled. Respondent failed to diagnose and treat her urinary tract infection.

D. Respondent treated Patient D, a 33 year old male inmate, on November 16, 2002 in the Emergency Department of Chenango Memorial Hospital, Norwich, New York. Patient D presented to the Emergency Department with a history of insulin dependent diabetes mellitus and hypertension. Patient D complained of feeling shaky, light-headedness, weakness, nasal congestion, nausea and vomiting. Respondent's medical care of Patient D failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to perform and/or document an adequate physical.
2. Respondent failed to order appropriate laboratory and/or diagnostic testing to rule out other conditions as part of his differential diagnosis.

E. Respondent treated Patient E, an 80 year old male, on September 3, 2002 in the Emergency Department of Chenango Memorial Hospital, Norwich, New York. Patient D presented to the Emergency Department with a history of chronic obstructive pulmonary disease and dysphagia. Patient E complained of vomiting after attempting to eat licorice. Nursing staff observed the patient to have slurred speech and an unsteady gait. Respondent's medical care of Patient E failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to order appropriate laboratory and/or diagnostic testing to rule out other conditions as part of his differential diagnosis.

- F. Respondent treated Patient F, a 50 year old male, on November 19, 2002 in the Emergency Department of Chenango Memorial Hospital, Norwich, New York. Patient F presented to the Emergency Department with a recent history of 30 seconds of diplopia. Respondent's medical care of Patient F failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to perform and/or record an adequate physical for Patient F.
  2. Respondent failed to order appropriate laboratory and/or diagnostic testing to rule out possible central nervous system etiology of the patient's complaint of diplopia.
- G. Respondent treated Patient G, a 39 year old male, on August 3, 2002 in the Emergency Department of Chenango Memorial Hospital, Norwich, New York. Patient G presented to the Emergency Department after being involved in motor vehicle accident the previous day. Patient G complained of neck and left anterior chest pain since the accident. Respondent's medical care of Patient G failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to order a chest x-ray to rule out other conditions as part of his differential diagnosis.

## **SPECIFICATIONS OF MISCONDUCT**

### **FIRST SPECIFICATION**

#### **NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in NY Education 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:

1. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, E and E.1, F and F1, F and F2, and/or G and G1.

### **SECOND SPECIFICATION**

#### **INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in NY Education 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:

2. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, E and E.1, F and F1, F and F2, and/or G and G1.

### THIRD THROUGH FIFTH SPECIFICATIONS

#### GROSS NEGLIGENCE

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

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

### SIXTH THROUGH EIGHTH SPECIFICATIONS


#### GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in NY Education Law § 6530(6) by practicing the profession of medicine with gross incompetence on a particular occasion as alleged in the facts of the following:

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

DATED:

2/2/04  
Albany, New York

  
BRIAN M. MURPHY  
Chief Counsel  
Bureau of Professional  
Medical Conduct

## EXHIBIT "B"

### Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
3. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
4. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms.
5. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and Respondent's staff at practice locations or OPMC offices.
6. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.

### **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 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.
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/her medical practice for the duration of the probationary 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 probation, 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/her 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 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;
    - a. 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
    - b. 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.



11. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.