

*Public*

**New York State Board for Professional Medical Conduct**

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

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*Office of Professional Medical Conduct*

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*Vice Chair*  
*Katherine A. Hawkins, M.D., J.D.*  
*Executive Secretary*

December 29, 2009

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

John Patrick DeSimone, M.D.

Redacted Address

Re: License No. 104285

Dear Dr. DeSimone:

Enclosed is a copy of BPMC #09-230 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect January 5, 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

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

**IN THE MATTER  
OF  
JOHN P. DESIMONE, M.D.**

**CONSENT  
ORDER**

BPMC No. #09-230

Upon the application of John P. Desimone, 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: 12-28-2009

Redacted Signature

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

**IN THE MATTER  
OF  
JOHN P. DESIMONE, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

John P. Desimone, M.D., represents that all of the following statements are true:

That on or about July 31, 1969, I was licensed to practice as a physician in the State of New York, and issued License No. 104285 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 (Board) has charged me with one specification 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 specification of professional medical conduct and agree to the following penalty:

Immediately upon issuance of the Consent Order for which I apply, my license to practice medicine shall be limited, pursuant to N.Y. Pub. Health Law § 230-a, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition. I shall be precluded from further reliance

upon my license to practice medicine to exempt me from the licensure, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated or certified by the Board of Regents, Department of Education, Department of Health or the Department of State.

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

- That Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC immediately upon having done so; and
- That Respondent shall return any and all official New York State prescriptions to the Bureau of Narcotic Enforcement, and shall surrender Respondent's Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within 15 days of the Order's effective date. Further, within 30 days of returning these prescriptions and surrendering the registration, Respondent shall provide documentary proof of these transaction(s) to the Director of OPMC; 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

- That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by N.Y. Educ. 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 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 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 Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

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 am aware and agree that, regardless of prior communication, 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 16 December 2009

Redacted Signature

~~JOHN P. DESIMONE, M.D.~~  
RESPONDENT

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

DATE: 12/16/09

Redacted Signature

JAMES D. LANTIER, ESQ.  
Smith, Sovik, Kendrick & Sugnet  
Attorneys for Respondent

DATE: 12/18/09

Redacted Signature

TIMOTHY J. MAHAR  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 12/23/09

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
JOHN P. DESIMONE, M.D.

JOHN P. DESIMONE, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 31, 1969, by the issuance of license number 104285 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A at his office from December 1990 to 2006 for diabetes, among other conditions. Respondents medical care of Patient A deviated from accepted standards of care as follows:
1. Respondent failed to adequately evaluate Patient A for the effects of diabetes.
  2. Respondent failed on one or more occasions to adequately screen Patient A for various forms of cancer.
- B. Respondent provided medical care to Patient B at his offices during the period from May 1996 through February 2006 for diabetes, among other conditions. Respondent's medical care deviated from accepted standards of medical care as follows:
1. Respondent failed to adequately evaluate Patient B for the effects of diabetes.
  2. Respondent failed to adequately treat Patient B.
- C. Respondent provided medical care to Patient C at his offices from February



1988 to 2006 for diabetes and hypercholesterolemia, among other conditions. Respondent's care of Patient C deviated from accepted standards of medical care as follows:

1. Respondent failed to adequately evaluate Patient C for the effects of diabetes.
2. Respondent failed on one or more occasions to adequately treat Patient C's diabetes.
3. Respondent failed on one or more occasions to adequately treat Patient C's hypercholesterolemia.

D. Respondent provided medical care to Patient D at Respondent's offices during the period from July 2000 to 2006 for diabetes and hypercholesterolemia, among other conditions. Respondent's care of Patient D deviated from accepted standards of medical care as follows:

1. Respondent failed to adequately evaluate Patient D for the effects of diabetes.
2. Respondent failed to adequately treat Patient D's HDL levels.
3. Respondent failed to screen Patient D for various forms of cancer.

E. Respondent provided medical care to Patient E at his offices from May 1984 through July 2006 for diabetes, among other conditions. Respondent's care of Patient E deviated from accepted standards of medical care as follows:

1. Respondent on one or more occasions failed to adequately treat Patient E's diabetes.
2. Respondent failed to adequately evaluate Patient E for cardiac disease.
3. Respondent failed to screen Patient E for various forms of cancer.

F. Respondent provided medical care to Patient F at his offices from August 1990 through January 2005 for hypertension, hypercholesterolemia and diabetes, among other conditions. Respondent's medical care of Patient F deviated from accepted standards of medical care as follows:

1. Respondent on one or more occasions failed to adequately treat Patient F's hypertension.
2. Respondent on one or more occasions failed to adequately treat Patient F's cholesterol and/ or lipids values.
3. Respondent failed to adequately evaluate Patient F for cardiac disease.
4. Respondent failed to adequately evaluate Patient F for the effects of diabetes.
5. Respondent failed to obtain an adequate family medical history from Patient F.
6. Respondent Failed to screen Patient F for prostate disease.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**


**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. 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 alleged in the following paragraphs of the Factual Allegations: A and A.1, A and A.2, B and B.1, B and B.2, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, D and D.3, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, F and F.3, F and F.4, F and F.5 and/or F and F.6.

DATE: December 18, 2009  
Albany, New York

Redacted Signature

  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct

## EXHIBIT "B"

### Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
3. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 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 include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's 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 forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.
4. If Licensee holds a Drug Enforcement Administration (DEA) certificate, within 15 days of the Order's effective date, Licensee shall advise the DEA in writing of the licensure action and shall surrender to the DEA any DEA controlled substance privileges issued pursuant to Licensee's New York license. Licensee shall promptly surrender to the DEA any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2.

5. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Licensee shall destroy all prescription pads bearing Licensee's name. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
6. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
7. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
8. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
9. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.