

July 14, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Michael J. Garrett, M.D.
REDACTED

Re: License No. 146407

Dear Dr. Garrett:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 11-178. This order and any penalty provided therein goes into effect July 21, 2011.

Please direct any questions to: Board for Professional Medical Conduct, 433 River Street, Suite 303, Troy, NY 12180, telephone # (518)402-0863.

Sincerely,

REDACTED

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

Enclosure

cc: Michael Ringwood, Esq.
Smith, Sovick, Kendrick & Sugnet, P.C.
250 South Clinton Street, Suite 600
Syracuse, NY 13202-1252

**IN THE MATTER
OF
MICHAEL J. GARRETT, M.D.**

CONSENT
ORDER

BPMC No. 11-178

Upon the application of (Respondent) Michael J. Garrett, 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: 7/14/11

REDACTED

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

IN THE MATTER
OF
MICHAEL J. GARRETT, M.D.

CONSENT
AGREEMENT
AND
ORDER

MICHAEL J. GARRETT, M.D., represents that all of the following statements are true:

That on or about July 1, 1981, I was licensed to practice as a physician in the State of New York, and was issued License No. 146407 by the New York State Education Department.

My current address is REDACTED 13354, 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 eleven 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 fifth specification of misconduct as it pertains to patients A, B C, E and F, in full satisfaction of the charges against me, and agree to the following penalty:

1. My license to practice medicine in New York State shall be suspended for twenty four months, with twenty-four months stayed.
2. Pursuant to Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of thirty-six months, subject to the terms set forth in attached Exhibit "B."

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

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

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, as directed.

Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in 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 Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, 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 understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 7/11/11

REDACTED

~~MICHAEL J. GARRETT~~
Respondent

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

DATE: 7/11/11

REDACTED

~~MICHAEL P. RINGWOOD~~
Attorney for Respondent

DATE: 7/11/11

REDACTED

~~VALERIE B. DONOVAN~~
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 7/14/11

REDACTED

~~KEITH W. SERVIS~~
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 J. GARRETT, M.D.**

**STATEMENT
OF
CHARGES**

MICHAEL J. GARRETT, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1981, by the issuance of license number 146407 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or around July 25, 2006, Respondent provided medical care to Patient A (patients are identified in Appendix A, attached), an 88-year old male who presented to the Emergency Department of Oneida Healthcare Center Hospital, 321 Genesee Street, Oneida, New York, with a chief complaint of being unable to urinate, and with a history of a prior partial prostatectomy. Respondent's care of Patient A did not meet acceptable standards of care in that Respondent performed an inadequate and incomplete evaluation of Patient A including, but not limited to: failure to obtain laboratory tests including blood urea nitrogen (BUN) and Creatinine; failure to perform a rectal examination; and/or failure to adequately evaluate for proper placement of the Foley catheter.
- B. On or around June 4, 2006, Respondent provided medical care to Patient B, a 20-month old female who presented at the Emergency Department of the

Oneida Healthcare Center Hospital with a 104.3 degree fever, an elevated respiratory rate of 52, a pulse reaching 191, and with a history of hypertension, heart murmur and myringotomy tube placement.

Respondent's care of Patient B did not meet acceptable standards of care as follows:

1. Respondent performed an inadequate and incomplete evaluation of Patient B including, but not limited to: failing to obtain a complete blood count (CBC); failing to obtain blood cultures; failing to obtain a chest x-ray; and/or failing to obtain a urinalysis.
2. Respondent failed to provide adequate discharge instruction regarding follow up with a physician.

C. On or around November 7, 2005, Respondent provided medical care to Patient C, a 12-year old male, who presented at the Emergency Department of Oneida Healthcare Center Hospital with a complaint of fever and vomiting, and with a history of cerebral palsy, spastic tongue, and seizure disorder. Respondent's care of Patient C did not meet acceptable standards of care as follows:

1. Respondent performed an inadequate physical examination and/or failed to adequately evaluate Patient C using laboratory testing.
2. Respondent failed to adequately hydrate Patient C.

D. On or around March 13, 2009, Respondent provided medical care to Patient D, a 50-year old male, who presented at the Emergency Department of Oneida Healthcare Center Hospital with dizziness and shortness of breath. Respondent's care of Patient D did not meet acceptable standards of care in that Respondent performed an inadequate and incomplete evaluation of Patient D including, but not limited to: failing to obtain Patient D's orthostatic vital signs; failing to evaluate Patient D's head and neck; and/or failing to perform and/or document a cardiovascular examination of Patient D.

E. On or around November 6, 2004, Respondent provided medical care to Patient E, a 59-year old female who presented at the Emergency Department of Oneida Healthcare Center with back pain, left hip pain and left lower leg pain following a motor vehicle accident. Respondent's care of Patient E did not meet acceptable standards of care as follows:

1. Respondent failed to adequately examine and/or failed to document an examination of Patient E's left hip, femur and/or pelvis.
2. Respondent failed to obtain and/or order X-rays studies of Patient E's left hip, femur and/or pelvis.
3. Respondent failed to inform Patient E of the X-ray report of an L1 compression fracture and/or failed to advise her to seek follow-up for the fracture.
4. Respondent prescribed Naprosyn for Patient E when she had reported taking Mobic, and failed to instruct Patient E to take only one non-steroidal anti-inflammatory drug (NSAID).

F. On or around April 25, 2001, Respondent provided medical care to Patient F, a 14-year old female who presented at the Emergency Department of Faxton-St. Luke's Healthcare, Utica, New York with abdominal pain and nausea. Respondent's care of Patient F did not meet acceptable standards of care as follows:

1. Respondent performed an inadequate examination and evaluation of Patient F in that he failed to perform a rectal examination, pelvic examination and/or failed to order a pregnancy test.
2. Respondent diagnosed Patient F as being constipated without adequate basis and inappropriately instructed Patient F to take medications for constipation.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS

GROSS NEGLIGENCE

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

1. The facts in paragraph A.
2. The facts in paragraphs B and B.1, and B and B.2.
3. The facts in paragraphs C and C.1, and C and C.2.
4. The facts in paragraph D.

FIFTH SPECIFICATION

NEGLECT 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 following:

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

SIXTH THROUGH NINTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(6) by practicing the profession of medicine with gross incompetence as alleged in the following:

6. The facts in paragraph A.
7. The facts in paragraphs B and B.1, and B and B.2.
8. The facts in paragraphs C and C.1, and C and C.2

9. The facts in paragraph D.

TENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the following:

10. The facts in paragraphs A, B and B.1, B and B.2, C and C.1, C and C.2, D, E and E.1, E and E.2, E and E.3, E and E.4, F and F.1 and/or F and F.2.

ELEVENTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the following:

11. The facts in paragraphs D and/or E and E.1

DATE: June 3, 2011
Albany, New York

REDACTED

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 N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of his license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, 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 this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

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, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
9. 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.
10. Respondent shall enroll in and complete a continuing education program in the area of record keeping, and complete a Board Review of Emergency Medicine course. This continuing education program, with specific courses proposed by Respondent, is subject to the Director of OPMC's prior written approval and shall be completed within the first 180 days of the probation period.
11. Respondent shall practice medicine only when supervised in his medical practice. 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.
12. 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.
13. Respondent shall authorize the practice supervisor to have access to his 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.
14. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.