



*New York State Board for Professional Medical Conduct*

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

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner of Health*

Patrick F. Carone, M.D., M.P.H.  
*Chair*  
Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

September 5, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Rafael Cunanan, M.D.  
1311 East Park  
Grand Island, NY 14072

RE: License No. 111229

Dear Dr. Cunanan:

Enclosed please find Order #BPMC 97-211 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

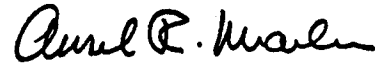
If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place, Suite 303  
433 River Street  
Troy, New York 12180

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management  
New York State Department of Health  
Corning Tower, Room 1315  
Empire State Plaza  
Albany, New York 12237

Sincerely,



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

Enclosure

cc: Daniel T. Roach, Esq.  
Roach, Brown, McCarthy, Gruber & Chiari  
1620 Liberty Building  
420 Main Street  
Buffalo, NY 14202-3678

Cindy M. Fascia, Esq.

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

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IN THE MATTER : CONSENT  
OF : AGREEMENT  
RAFAEL CUNANAN, M.D. : AND ORDER  
: BPMC # 97-211

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RAFAEL CUNANAN, M.D., says:

On or about January 25, 1972, I was licensed to practice as a physician in the State of New York, having been issued license number 111229 by the New York State Education Department.

I understand that I have been charged with sixteen specifications of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit A.

I admit guilt to the Ninth Specification and the Factual Allegations set forth therein in full satisfaction of the charges against me.

I hereby agree to the following penalties:

1) A four year suspension of my license to practice medicine in New York, with the suspension stayed in its entirety, conditioned on my full compliance for a probationary period of four years with the Terms of Probation attached hereto as Exhibit B.

2) A civil penalty in the amount of ten thousand dollars (\$10,000), which must be paid in full within thirty days (30) of the effective date of this Consent Order. Payment must be made to the Bureau of Accounts Management, New York State Department of Health, Empire State Plaza, Corning Tower, 17th Floor, Albany, New York, 12237. I understand that if I do not pay said civil penalty in full by the required date, I shall be subject to all provisions of law relating to debt collection by the State of New York, and all such other penalties or procedures as are authorized under New York State Law, 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 the denial of applications to renew my registration to practice medicine with the New York State Education Department. I further understand that if I do not pay said civil penalty in full by the required date, my failure to do so will be considered professional misconduct under N.Y. Education Law §6530(29), and I will be subject to prosecution accordingly.

I agree that in the event that I am charged with professional misconduct and/or a violation of the terms of my probation in the future, this agreement and order, including Exhibits A and B, shall be admitted into evidence in any such misconduct or violation of probation proceeding.

I agree that, as a condition of this Order, I will maintain current registration of my license with the New York State Education Department, Division of Professional Licensing Services, and pay all registration fees. This condition will

remain in effect except during periods of actual suspension, if any, imposed by this Order. This condition shall be in effect beginning thirty days after the effective date of this Order and will continue until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I understand that any failure by me to comply with this condition shall constitute misconduct as defined by New York State Education Law §6530(29).

I understand that, in the event that the Board does not grant this application, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me; such application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the State Board for Professional Medical Conduct grants my application, an order of the Chairperson of the Board shall be issued in accordance with same.

I make this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.

*Rafael Cunanan, M.D.*

RAFAEL CUNANAN, M.D.  
RESPONDENT

Subscribed before me this 18<sup>th</sup>  
day of August, 1997.

*Darlene B. Cronkhite*

NOTARY PUBLIC

**DARLENE B. CRONKHITE**  
Notary Public, State of New York  
Qualified in Niagara County  
My Commission Expires Jan. 18, 1999

AGREED TO:

DATE:

18 August 1997

*Daniel F. Roach*  
DANIEL F. ROACH, ESQ.  
Attorney for Respondent

DATE:

August 20, 1997

*Cindy M. Fascia*  
CINDY M. FASCIA  
ASSOCIATE COUNSEL  
Bureau of Professional  
Medical Conduct

DATE:

Aug. 25, 1997

*Anne F. Saile*  
ANNE F. SAILE  
DIRECTOR  
Office of Professional  
Medical Conduct

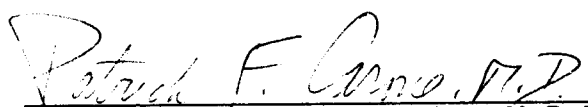
ORDER

Upon the proposed agreement of RAFAEL CUNANAN, M.D. (Respondent) for Consent Order, which proposed agreement is made a part hereof, it is AGREED TO and

ORDERED, that the proposed agreement and the provisions thereof are hereby adopted; and it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order by certified mail, whichever is earliest.

DATED: August 27, 1997

  
PATRICK F. CARONE, M.D., M.P.H.  
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 : STATEMENT  
OF : OF  
RAFAEL CUNANAN, M.D. : CHARGES

-----X

RAFAEL CUNANAN, M.D., the Respondent, was authorized to practice medicine in New York State on January 25, 1972 by the issuance of license number 111229 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine through June 30, 1997, with a registration address of 1311 E. Park, Grand Island, New York 14072.

**FACTUAL ALLEGATIONS**

A. Respondent provided medical treatment to Patient A (patients are identified in Appendix) from approximately November 27, 1990 through January 14, 1991. Respondent, on January 14, 1991 at Niagara Falls Memorial Medical Center, performed a dilatation and curettage, suction curettage, laparoscopy, and bilateral tubal coagulation on Patient A.

1. Respondent failed to obtain a pregnancy test prior to performing the above surgery on Patient A, which surgery resulted in termination of a pregnancy.

EXHIBIT A



2. Respondent failed to give Patient A an opportunity to choose to continue her pregnancy or to give her consent to terminate her pregnancy.
3. Respondent did not inform Patient A that he had terminated her pregnancy.

B. Respondent provided medical treatment to Patient B on various occasions from approximately November 15, 1982 through February 19, 1993 at his office and/or Niagara Falls Memorial Medical Center.

1. Respondent, on or about May 4, 1990, at Niagara Falls Memorial Medical Center, performed a dilatation and curettage, laser vaporization of the cervix, laparoscopy and bilateral tubal coagulation on Patient B.
  - a. Respondent failed to obtain a pregnancy test prior to performing the above surgery on Patient B, which surgery resulted in termination of a pregnancy.
  - b. Respondent failed to give Patient B an opportunity to choose to continue her pregnancy or to give her consent to terminate her pregnancy.
  - c. Respondent failed to obtain the results of

pathology tests before he performed laser vaporization of Patient B's cervix and/or failed to document such results.

2. Respondent, on or about November 6, 1989, at Niagara Falls Memorial Medical Center, performed a dilatation and curettage, laparoscopy, laser vaporization of suspected endometriosis, and uterine suspension on Patient B.
  - a. Respondent failed to obtain a pregnancy test prior to performing the above surgery on Patient B, which surgery resulted in termination of a pregnancy.
  - b. Respondent failed to give Patient B an opportunity to choose to continue her pregnancy or to give her consent to terminate her pregnancy.
  - c. Respondent did not inform Patient B that he had terminated her pregnancy, or failed to document such information.

C. Respondent provided medical treatment to Patient C on various occasions from approximately December 12, 1990 through March 27, 1991 at his office and/or Niagara Falls Memorial Medical Center.

1. Respondent failed to recognize possible uterine growth retardation in a timely manner.
2. Respondent failed to order timely and/or adequate studies to confirm growth retardation and/or to evaluate fetal well-being.

D. Respondent provided medical treatment to Patient D on various occasions from approximately December 11, 1982 through December 11, 1984 at his office and/or Niagara Falls Memorial Medical Center. Respondent, on or about December 7, 1984, performed a dilatation and curettage, laparoscopy, and bilateral tubal sterilization on Patient D.

1. Respondent performed a bilateral tubal sterilization on Patient D, when in fact Patient D was not supposed to have said procedure.
2. Respondent, on approximately December 11, 1984, during an appointment with Patient D at his office, engaged in the following with Patient D with regard to the bilateral tubal sterilization he performed on December 7, 1984:
  - a. Respondent told Patient D that when he was cauterizing her cervix, the instrument slipped and he cauterized her Fallopian tubes, or words to such effect, when

Respondent knew or should have known this was untrue.

- b. Respondent told Patient D that if she ever wanted to become pregnant, it would be a simple procedure to reverse the tubal sterilization, or words to such effect, when Respondent knew or should have known that a successful reversal could not be guaranteed.
  - c. Respondent told Patient D that this was confidential between doctor and patient, and told Patient D not to tell her mother about the tubal cauterization, or words to such effect, when in fact Respondent wanted to secure Patient D's silence about the procedure.
  - d. Respondent gave Patient D two fifty dollar bills and told her that it was to compensate her for having to take time off from her work, or words to such effect, when in fact Respondent wanted to secure Patient D's silence about the procedure he had performed.
3. Respondent, in his medical record for Patient D, made an entry regarding his December 11, 1984 conversation with Patient D that did not accurately reflect said conversation, and Respondent knew such facts.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with practicing medicine with gross negligence on a particular occasion, in violation of New York Education Law §6530(4) (McKinney Supp. 1997), in that Petitioner charges:

1. The facts in Paragraphs A and A.1 and/or A.2 and/or A.3.
2. The facts in Paragraphs B and B.1(a) and/or B.1(b) and/or B.1(c) and/or B.2(a) and/or B.2(b) and/or B.2(c).
3. The facts in Paragraphs C and C.1 and/or C.2.
4. The facts in Paragraphs D and D.1.

FIFTH THROUGH SEVENTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with practicing medicine with gross incompetence in violation of New York Education Law §6530(6) (McKinney Supp. 1997), in that Petitioner charges:

5. The facts in Paragraphs A and A.1 and/or A.2 and/or A.3.
6. The facts in Paragraphs B and B.1(a) and/or B.1(b) and/or B.1(c) and/or B.2(a) and/or B.2(b) and/or B.2(c).
7. The facts in Paragraphs C and C.1 and/or C.2.
8. The facts in Paragraphs D and D.2(a) and/or D.2(b).

#### NINTH SPECIFICATION

##### NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with practicing medicine with negligence on more than one occasion in violation of New York Education Law §6530(3) (McKinney Supp. 1997), in that Petitioner charges that Respondent committed two or more of the following:

9. The facts in Paragraphs A and A.1 and/or A.2 and/or A.3 and/or B and B.1(a) and/or B.1(b) and/or B.1(c) and/or B.2(a) and/or B.2(b) and/or B.2(c) and/or C and C.1 and/or C.2 and/or D and D.1 and/or D and D.2(a) and/or D and D.2(b).

#### TENTH SPECIFICATION

##### INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with practicing medicine with incompetence on more than one occasion in violation of New York Education Law §6530(5) (McKinney Supp. 1997), in that Petitioner charges that Respondent committed two or more of the following:

10. The facts in Paragraphs A and A.1 and/or A.2 and/or A.3 and/or B and B.1(a) and/or B.1(b) and/or B.1(c) and/or B.2(a) and/or B.2(b) and/or B.2(c) and/or C and C.1 and/or C.2 and/or D and D.1 and/or D and D.2(a) and/or D and D.2(b).

#### ELEVENTH AND TWELFTH SPECIFICATIONS

##### FRAUDULENT PRACTICE

Respondent is charged with practicing medicine fraudulently in violation of New York Education Law §6530(2) (McKinney Supp. 1997), in that Petitioner charges:

11. The facts in Paragraphs A and A.3.
12. The facts in Paragraphs D and D.2(a) and/or D.2(b) and/or D.2(c) and/or D.2(d) and/or D.3.

#### THIRTEENTH AND FOURTEENTH SPECIFICATIONS

##### MORAL UNFITNESS

Respondent is charged with committing conduct in the practice of medicine which evidences moral unfitness to practice medicine under New York Education Law §6530(20) (McKinney Supp. 1997), in that Petitioner charges:

13. The facts in Paragraphs A and A.3.
14. The facts in Paragraphs D and D.2(a) and/or D.2(b) and/or D.2(c) and/or D.2(d) and/or D.3.

FIFTEENTH AND SIXTEENTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with professional misconduct under New York Education Law §6530(32) (McKinney Supp. 1997) by reason of his failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges:

15. The facts in Paragraphs B and B.2(c).
16. The facts in Paragraphs D and D.3.

DATED: *July 23*, 1997  
Albany, New York


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



EXHIBIT B  
TERMS OF PROBATION

1. Respondent will conform fully:
  - a. to the moral and professional standards of conduct imposed by law and by his profession
  - b. with all civil and criminal laws, rules and regulations.
  
2. Respondent will submit written notification to the New York State Department of Health, addressed to the Director of the the Office of Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180-2299, of the following:
  - a. any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility within thirty days of each action;
  - b. any and all changes in personal and professional addresses and telephone numbers and facility affiliations, within 30 days of such changes. This will include any change in practice location, within or outside of the State of New York. The date of departure from the State of New York, and the date of return, if any, must be reported in writing.

Failure to notify the Office of Professional Medical Conduct of any of the above will be considered a violation of probation.

3. Respondent's professional performance may be reviewed by the Director of OPMC or her designees. Said reviews shall occur on a quarterly basis. Reviews may include, but shall not be limited to, review of office records and/or hospital records, interviews with and/or periodic visits with Respondent and his staff, at Respondent's office and/or OPMC's offices. Respondent shall provide to OPMC on a monthly basis a list of all patients on whom Respondent performed surgery in that month, including patient name, admitting diagnosis, procedure(s) performed and discharge diagnosis. Respondent shall also provide to OPMC on a monthly basis a list of all obstetrical patients admitted to the hospital that month in which Respondent was involved in the medical care of said obstetrical patient; including patient name, delivery site, surgical/obstetric procedure(s) and discharge diagnosis.

4. Respondent will maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. In cases of prescribing, dispensing, or administering of controlled substances, the medical record shall contain all information required by state rules and regulations regarding controlled substances. In all cases involving surgery, Respondent's office records shall include, but not be limited to, documentation of all pre-operative visits and physical examinations, indications for surgery, operative reports, and documentation of all postoperative visits and physical examinations.
5. Respondent's period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to cease the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director of OPMC again, in writing, prior to any change in his status. Upon Respondent's resumption of the practice of medicine in New York State, the period of probation shall resume and Respondent shall satisfy and fulfill any terms of probation which were not fulfilled.
6. Respondent's practice of medicine during the period of probation shall be monitored by a licensed physician, board certified in Obstetrics and Gynecology, approved in advance, in writing, by the Director of the Office of Professional Medical Conduct or her designee. It shall be Respondent's responsibility to locate a physician willing to serve in such a capacity and who is approved by the Director of Office of Professional Medical Conduct. The practice monitor shall not be a family member or personal friend of Respondent, or be in a professional relationship with Respondent which could cause a conflict with monitoring responsibilities. Respondent may not practice medicine until an approved practice monitor and monitoring program are in place. Any practice of medicine prior to the submission and approval of a proposed monitor will be a violation of probation.
  - a. Respondent shall make available to the practice 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 office on a monthly basis and shall review no less than ten (10) patient records maintained by Respondent, including but not limited to Respondent's notes of office visits and prescribing information. The practice monitor shall select these ten records from a list of all patients treated by Respondent in his office and/or at Niagara Falls Memorial Hospital, and/or any other hospital or facility at which Respondent practices during the probationary period. The practice monitor may select the records to be reviewed at random, or may request

the records of specific named patients, at the discretion of the monitor and/or at the request of OPMC. The monitor's review shall be to determine whether Respondent's medical practice is being conducted in accordance with accepted standards of medical care. If any of the records indicate, or if the monitor otherwise ascertains or perceives Respondent to have deviated from accepted standards of medical care or to have otherwise committed professional misconduct of any kind, or if Respondent fails to cooperate with or obstructs the monitor in any way, the monitor shall report said deviation and/or misconduct to OPMC within twenty-four (24) hours of the monitor's learning of said deviation and/or misconduct and/or failure to cooperate.

- b. Respondent shall cause the practice monitor to submit written monthly reports to OPMC regarding the patient charts reviewed by the monitor and any other means by which the monitor has evaluated Respondent's practice. The monthly reports must include the patient's name, medical record number, and assessment of the quality of care provided by Respondent for each record reviewed. If the monthly reports for the first year of probation indicate that Respondent is in compliance, the reports may, at the discretion of OPMC, be thereafter submitted on a quarterly, rather than a monthly basis. Failure of the practice monitor to submit required reports on a timely basis will constitute a violation of probation.
- c. If, at any time during the probation period, Respondent's practice monitor is no longer willing, able, or qualified to serve, Respondent must submit the name of a proposed successor monitor to OPMC within seven days of Respondent learning that his monitor is no longer willing, able or qualified to serve. Any proposed successor monitor is subject to approval by OPMC.
- d. All expenses associated with practice monitoring, including the fees, if any, of the monitoring physician, shall be the sole responsibility of Respondent.
- e. Respondent must 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 or designee prior to the placement of a practice monitor.

7. Respondent, during each year of the period of probation, commencing with the year in which this Consent Order is issued, shall successfully complete one hundred (100) hours of Category I Continuing Medical Education (CME), for a total of four hundred (400) hours during the four year probation period. At least one hundred hours of CME during the probationary period shall address issues pertaining to medical ethics. The remainder of the CME shall address issues in Obstetrics and Gynecology. All CME courses that Respondent intends to take in fulfillment of his required hours under this Consent Order are subject to the prior approval of OPMC. Respondent shall also submit written verification of the successful completion of his yearly CME requirements to OPMC on an annual basis.
8. If Respondent fails to pay his civil penalty in full by the date prescribed herein, said failure shall constitute a violation of Respondent's probation, as well be subject to such other penalties set forth in this Order.
9. Respondent shall bear all costs related to his compliance with the terms of probation.
10. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his or her profession in accordance with the terms of probation. Upon receipt of evidence of non compliance with, or any violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against Respondent as may be authorized by law.