

Public

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

**IN THE MATTER
OF
JOHN NAPOLI, M.D.**

**CONSENT
ORDER**

BPMC No. #09-86

Upon the application of (Respondent) John Napoli 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: 5-10-2009

Redacted Signature

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

**IN THE MATTER
OF
JOHN NAPOLI, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

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

That on or about February 19, 1998, I was licensed to practice as a physician in the State of New York, and issued License No. 209596 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 three 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 agree not to contest the second specification, in full satisfaction of the charges against me, and agree to the following penalty:

1. Pursuant to New York Public Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.
2. I will be subject to the following conditions imposed by this Consent Order:
 - A. Within 90 days of the effective date of this Consent Order, I shall enroll in and complete continuing education program (CME) approved by the Director of OPMC in the area of psychopharmacology;
 - B. Following the successful completion of the above-referenced CME, at OPMC's request, I shall cooperate fully and make available for a single review by OPMC, and/or in

OPMC's discretion by a physician proposed by Respondent and approved in writing by the Director of OPMC, complete copies of any and all medical and office records selected by OPMC to enable their review of documentation which occurred after the completion of the CME.

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 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 4/13/09

Redacted Signature

~~JOHN NAPOLI, M.D.~~
~~RESPONDENT~~

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

DATE: 4/29/09

Redacted Signature

ROBERT D. BARONE, ESQ.
Attorney for Respondent

DATE: 4/24/09

Redacted Signature

VALERIE B. DONOVAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 5/6/09

Redacted Signature

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
JOHN NAPOLI, M.D.

STATEMENT
OF
CHARGES

JOHN NAPOLI, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 19, 1998, by the issuance of license number 209596 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From in or around December 2005 through April 2006, Respondent provided medical care to Patient A (patients are identified in Appendix A, attached hereto), a female who presented with a history of alcohol abuse, overdose of sleeping pills and alcohol, anxiety and depression, at Community Concern ("Community Concern") of Western New York, Derby, New York. Respondent's selection of medication regimens, doses of medications and overall clinical management for Patient A failed to meet minimally accepted standards of psychiatric practice.
- B. From in or around July 2005 through in or around June 2007, Respondent provided medical care to Patient B, a female who presented with depression at the Dale Association, North Tonawanda, New York. Respondent's care and treatment of Patient B did not meet minimally accepted standards of psychiatric practice in that he failed to provide a rationale for medication

regimens and/or doses of medications, and failed to document discussions with Patient B of drug benefits and side effects.

- C. From in or around November 2005 through in or around June 2007, Respondent provided medical care to Patient C, a female who presented with bipolar disorder at the Dale Association. Respondent's care and treatment of Patient C did not meet minimally accepted standards of psychiatric practice in that he failed to provide adequate documentation for the need for dosing in excess of recommended maximums and/or Respondent failed to document discussions with Patient C of drug benefits and side effects.
- D. From in or around February 2004 through in or around December 2006, Respondent provided medical care to Patient D, a female who presented with depression at the Dale Association. Respondent's care and treatment of Patient D did not meet minimally accepted standards of psychiatric practice in that he failed to provide adequate documentation for his choice of medication regimens, and failed to document discussions with Patient D of drug benefits and side effects.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

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.

SECOND SPECIFICATION

NEGLIGENCE 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:

2. The facts in Paragraphs A, B, C and/or D.

THIRD 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 facts of:

3. The facts in Paragraphs A, B, C and/or D.

DATE: April ²³ 2009
Albany, New York

Redacted Signature

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