

**NEW YORK**  
state department of  
**HEALTH**

Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

December 6, 2012

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

Gregory L. Lavigne, M.D.  
6 Tower Place  
Executive Park, Suite 2  
Albany, NY 12203

Re: License No. 145331

Dear Dr. Lavigne:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-265. This order and any penalty provided therein goes into effect December 13, 2012.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

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

Enclosure

cc: Dennis A. First, Esq.  
O'Connor, O'Connor, Bresee & First, P.C.  
20 Corporate Woods Boulevard  
Albany, NY 12211

IN THE MATTER  
OF  
GREGORY LAVIGNE, M.D.

CONSENT  
ORDER

Upon the application of (Respondent) GREGORY LAVIGNE, 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: 12/5/2012

REDACTED

\_\_\_\_\_  
ARTHUR S. HENGERER, M.D.  
Chair  
State Board for Professional Medical Conduct

IN THE MATTER  
OF  
GREGORY LAVIGNE, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

GREGORY LAVIGNE, M.D., represents that all of the following statements are true:

That on or about March 20, 1981, I was licensed to practice as a physician in the State of New York, and issued License No. 145331 by the New York State Education Department.

My current address is 6 Tower Place, Executive Park, Suite 2, Albany, New York 12203, 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 or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I admit the Fourth Specification (negligence on more than one occasion) solely as it relates to Paragraphs "B" through and including "B.5"; I also admit the Fifth Specification

(failing to maintain an adequate record), in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to New York Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for 24 months, with the period of actual suspension stayed, pending my compliance with the Terms of Probation set forth in attached Exhibit "B."

Pursuant to New York Pub. Health Law § 230-a(9), I shall be placed on probation for 24 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. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

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

11/14/12

REDACTED

GREGORY LAVIGNE, M.D.  
RESPONDENT

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

DATE: 11/20/12

REDACTED

\_\_\_\_\_  
DENNIS A. FIRST, ESQ.  
Attorney for Respondent

DATE: 11/27/12

REDACTED

\_\_\_\_\_  
MICHAEL A. HISER, ESQ.  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 12/3/2012

REDACTED

for \_\_\_\_\_  
KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct



IN THE MATTER  
OF  
GREGORY LAVIGNE, M.D.

STATEMENT  
OF  
CHARGES

GREGORY LAVIGNE, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 20, 1981, by the issuance of license number 145331 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. Respondent provided psychiatric medical care to Patient A (patients are identified only in the attached Appendix), a female approximately 42 years old when treatment began, at various times between 1996 and 2010 at Respondent's office at 317 South Manning Blvd, Albany, New York, 12207, and at 6 Tower Place, Executive Park, Suite 2, Albany, New York 12203-3725 ["Respondent's office"]. Respondent's care of Patient A failed to meet minimum standards of care, in that:

1. Respondent, at or near the time that he began treating Patient A, failed to perform a comprehensive initial psychiatric evaluation, and/or failed to document that he had performed such a comprehensive initial psychiatric evaluation.
2. Respondent, despite providing medications to Patient A beginning approximately July through September 1996, failed to confirm Patient A's baseline physical condition, and/or failed to document that he had so confirmed Patient A's physical examination.
3. Respondent, despite providing medications to Patient A from approximately 1996 through 2011, failed to assess Patient A for possible physical

condition changes on at least an annual basis, and/or failed to document that he has assessed Patient A for possible physical condition changes.

4. Respondent, despite providing ongoing care and treatment to Patient A on an almost weekly basis in calendar year 2001, documented only one office visit note for the patient, and thus failed to maintain an adequate record of his evaluation and treatment of the patient.
5. Respondent, despite documenting on May 21, 2002, that the patient "felt suicidal" over the past weekend, failed to adequately evaluate the patient's mental status and/or document that he adequately evaluated the patient's mental status.
6. Respondent, despite documenting on May 21, 2002, that the patient "felt suicidal" over the past weekend, failed to see or contact the patient for a follow up session until August 7, 2002, and/or failed to document the he saw or contacted the patient prior to August 7, 2002.
7. Respondent, despite being reimbursed for ongoing treatment to Patient A for approximately 220 service dates/office visits between January 2002 and December 2006, maintained no adequate record of his evaluation and treatment of the patient for approximately 200 of those service dates/office visits.

B. Respondent provided psychiatric medical care to Patient B, a female approximately 29 years old when treatment began, at various times between 2005 and 2008 at Respondent's office. Respondent's care of Patient B failed to meet minimum standards of care, in that:

1. Respondent, at or near the time that he began treating Patient B, failed to perform a comprehensive initial psychiatric evaluation of the patient, and/or failed to document that he had performed such a comprehensive initial evaluation of the patient.
2. Respondent, during the course of his treatment of Patient B from 2005 through 2008, failed to perform ongoing psychiatric evaluations, and/or failed to document that he had performed such evaluations.

3. Respondent, despite providing medications to Patient B beginning approximately May 2005, failed to confirm Patient B's baseline physical condition, and/or failed to document that he had confirmed Patient B's physical examination.
4. Respondent, despite providing medications to Patient B from approximately 2005 through 2008, failed to assess Patient B for possible physical condition changes on at least an annual basis, and/or failed to document that he had assessed Patient B for possible physical condition changes.
5. Respondent provided medications to Patient B from approximately 2005 through 2008 without adequate medical indication and/or without documenting such adequate medical indication.

C. Respondent provided psychiatric medical care to Patient C, a female approximately 27 years old when treatment began, at various times between 2005 and 2011 at Respondent's office. Respondent's care of Patient C failed to meet minimum standards of care, in that:

1. Respondent, at or near the time that he began treating Patient C, failed to perform a comprehensive initial psychiatric evaluation, and/or failed to document that he had performed such a comprehensive initial evaluation of the patient.
2. Respondent, during the course of his treatment of Patient C from 2005 through 2011, failed to perform ongoing psychiatric evaluations of the patient, and/or failed to document that he had performed such evaluations.
3. Respondent, despite providing medications to Patient C from approximately 2005 through 2011, and/or failed to document that he had assessed Patient C for possible physical condition changes.
4. Respondent provided medications to Patient C from approximately 2005 through, without adequate medical indication and/or without documenting such adequate medical indication.

5. Respondent provided medications to Patient C from approximately 2005 through 2011 at varying doses without adequate medical indication for varying the doses, and/or without documenting such adequate medical indication.
6. Respondent, despite providing ongoing care to Patient C between approximately April 2005 and December 2006 that included more than 40 office visits or other contact, documented no office visits during that time, and thus failed to maintain an adequate record of his evaluation and treatment of the patient.
7. Respondent, despite providing ongoing care to Patient C between approximately January 2007 and December 2008, that included numerous office visits or other contact, documented no office visits during that time, and thus failed to maintain an adequate record of his evaluation and treatment of the patient.

### **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 facts of the following:

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

#### **FOURTH 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 facts of:

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

#### **FIFTH 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:

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

DATE: November 28, 2012  
Albany, New York

REDACTED

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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 Respondent's 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), Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, 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) For the period of stayed suspension and probation, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
  - a) Respondent shall make available to the 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 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 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.

- 11) Respondent shall enroll in and successfully complete a continuing education program in the areas of documentation of medical care, in the prescribing of controlled substances, and in the prescribing of medications for psychiatric diagnoses. This continuing education program is subject to the Director of OPMC's prior written approval and shall be successfully completed within the first 90 days of the probation period.
- 12) 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.