

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

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

*Richard F. Daines, M.D.*  
*Commissioner*  
*NYS Department of Health*  
*James W. Clyne, Jr.*  
*Executive Deputy Commissioner*  
*Keith W. Servis, Director*  
*Office of Professional Medical Conduct*

*Kendrick A. Sears, M.D.*  
*Chair*  
*Carmela Torrelli*  
*Vice Chair*  
*Katherine A. Hawkins, M.D., J.D.*  
*Executive Secretary*

December 23, 2009

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

David E. Rosenberg, M.D.

Redacted Address

Re: License No. 131499

Dear Dr. Rosenberg:

Enclosed is a copy of BPMC #09-226 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect December 30, 2009.

**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: Marvin L. Lifshutz, Esq.  
Lifshutz & Lifshutz, P.C.  
501 Fifth Avenue, Suite 506  
New York, NY 10017

**IN THE MATTER  
OF  
DAVID ROSENBERG, M.D.**

**CONSENT  
ORDER**

BPMC No. #09-226

Upon the application of (Respondent) DAVID ROSENBERG, 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: 12-22-2009

Redacted Signature

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

**IN THE MATTER  
OF  
DAVID ROSENBERG, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

DAVID ROSENBERG, M.D., represents that all of the following statements are true:

That on or about July 8, 1977, I was licensed to practice as a physician in the State of New York, and issued License No. 131499 by the New York State Education Department.

My current address is Redacted Address  
New York 10025-5491, 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 two 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 Statement of Charges, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for 36 months, with that suspension to be entirely stayed.

Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for 36 months, subject to the terms set forth in attached Exhibit "B."

Pursuant to §230-a(3) of the Public Health Law, my license to practice medicine in the state of New York shall be limited so as to:

- Preclude prescribing, dispensing and/or administering of any controlled substances encompassed in Schedule II of New York Public Health Law §3306 and/or in 21 U.S.C. §812. Any patients being prescribed Schedule II controlled substances by me prior to the execution of this agreement must be appropriately referred to another health care provider upon execution of this agreement.
- Preclude treatment of any patients for chronic pain conditions. All such current patients shall be appropriately referred for treatment.
- Permit proper prescribing, dispensing and/or administering of Schedule III controlled substances, but only upon the condition that I maintain a Prescribing Log, in a form acceptable to the Office of Professional Medical Conduct, identifying every patient for whom a schedule III controlled substance is prescribed, dispensed and/or administered and every Schedule III controlled substance that is prescribed, dispensed and/or administered to each of those patients. The Prescribing Log shall be separate and apart from the legally and professionally required medical charts for each patient. The Prescribing Log and medical records shall at all times be made available to the Office of Professional Medical Conduct upon request, and, during the period of probation, shall be provided to the Practice Monitor, as set forth in 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 10/18/09

Redacted Signature

DAVID ROSENBERG, M.D.  
RESPONDENT

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

DATE: 11-23-09

Redacted Signature

~~MARVIN LIFSHUTZ, ESQ.~~  
Attorney for Respondent

DATE: 12/14/09

Redacted Signature

~~NANCY STROHMEYER~~  
Assistant Counsel  
Bureau of Professional Medical Conduct

DATE: 12/22/09

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  
DAVID ROSENBERG, M.D.**

STATEMENT  
OF  
CHARGES

DAVID ROSENBERG, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 8, 1977, by the issuance of license number 131499 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. During the period 1999 through 2006, Respondent inappropriately prescribed controlled substances to Patients A-E (all patients referred to herein are identified in Appendix "A") on repeated occasions and failed to consult with or refer these patients appropriately to pain management specialists or programs, and to other appropriate physician-specialists.
- B. During the period 1991 through 2001, Respondent failed to maintain records which accurately reflected the evaluation and treatment of Patients A-E.

**SPECIFICATION OF CHARGES**

**FIRST 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 two or more of the following:

1. Paragraph A.

**SECOND 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:

2. Paragraph B.

DATE: <sup>Dec 14</sup>  
~~October~~, 2009  
New York, New York

< Redacted Signature

\_\_\_\_\_  
Roy Nemerson  
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), 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.

#### PRACTICE MONITOR

10. Within thirty days of the effective date of the order, 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.
  - 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, in a form acceptable to the Office of Professional Medical Conduct, maintain a log identifying every patient for whom a schedule III controlled substance is prescribed, dispensed and/or administered and every Schedule III controlled substance that is prescribed, dispensed and/or administered to each of those patients. The log shall contain each patient's name, the date the prescription was written, and the name, strength, dosage and quantity for each Schedule III narcotic prescribed, dispensed and/or administered. The log, along with the corresponding patient medical records, shall be made available to the practice monitor each time the practice monitor visits Respondent's practice and upon any other occasion which the practice monitor requests.
  - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - d. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
  - e. 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 complete a continuing education program in areas including but not limited to medical record keeping as directed by the Office of Professional Medical Conduct. This continuing education program is subject to the Director of OPMC's prior written approval and shall be 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.