

Public

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

May 13, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Samir Monir Mostafa, M.D.
aka Mostafa Samir, M.D.
REDACTED

Re: License No. 160951

Dear Dr. Mostafa:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 13-134. This order and any penalty provided therein goes into effect May 20, 2013.

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: Amy Kulb, Esq
Jacobsen, Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 720
Garden City, NY 11530

**IN THE MATTER
OF
SAMIR MONIR MOSTAFA, M.D. a/k/a MOSTAFA
SAMIR, M.D.**

CONSENT
ORDER

Upon the application of (Respondent) Samir Monir Mostafa, M.D. a/k/a Mostafa Samir, 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: 5/11/2013

REDACTED

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

**IN THE MATTER
OF
SAMIR MONIR MOSTAFA, M.D. a/k/a MOSTAFA
SAMIR, M.D.**

CONSENT
AGREEMENT

Samir Monir Mostafa, M.D. a/k/a Mostafa Samir, M.D., represents that all of the following statements are true:

That on or about December 10, 1984, I was licensed to practice as a physician in the State of New York, and issued License No. 160951 by the New York State Education Department.

My current address is REDACTED and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

The New York State Board for Professional Medical Conduct (Board) has charged me with seventeen specifications of professional misconduct. A hearing regarding those charges has commenced but has not been concluded.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I assert that I cannot successfully defend against at least one of the acts of misconduct alleged, in full satisfaction of the charges pending against me, and agree to the following penalty:

Immediately upon issuance of the Consent Order for which I apply, my license to practice medicine shall be limited, pursuant to N.Y. Pub. Health Law § 230-a, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition. I shall be precluded from further reliance upon my license to practice medicine to exempt me from the licensure, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated or certified by the Board of Regents, Department of Education, Department of Health or the Department of State.

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

That Respondent shall return any and all official New York State prescriptions to the Bureau of Narcotic Enforcement, and, in the event that Respondent holds a Drug Enforcement Administration (DEA) Certificate for New York State, Respondent shall surrender Respondent's Certificate to DEA within 15 days of the Order's effective date. All submissions to DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011. Further, within 30 days of returning these prescriptions and surrendering the Certificate,

respondent shall provide documentary proof of these transaction(s) to the Director of OPMC; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this 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 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; and

That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined in 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 the Public 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 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 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 Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct 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 ask that the Board adopt this Consent Agreement.

I am aware and agree that, regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the Consent Agreement that I propose in this application, or to decline to do so.

DATE 5/2/2013

REDACTED

Samir Monir Mostafa, M.D. a/k/a
Mostafa Samir, M.D.
RESPONDENT

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

DATE: 5/2/13

REDACTED

~~PAUL WALKER, ESQ.~~ Amy T. Kulb
~~Peltz and Walker~~
Attorney for Respondent

DATE: 5/6/13

REDACTED

DANIEL GUENZBURGER
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 5/10/13

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

SAMIR MONIR MOSTAFA, M.D. a/k/a MOSTAFA SAMIR,

M.D.

STATEMENT

OF

CHARGES

SAMIR MONIR MOSTAFA, M.D. a/k/a MOSTAFA SAMIR, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 10, 1984 by the issuance of license number 160951 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about and between July 1, 2010, and July 30, 2012, Respondent purchased one million eight hundred sixty-three thousand three hundred (1,863,300) dosage units of the controlled substances phentermine hydrochloride and phendimetrazine. Respondent dispensed these medications to patients at his office located at 1-A New Highway, Commack, New York.
1. Respondent failed to electronically report controlled substance dispensing information to the Department of Health, as required by Public Health Law Section 3331(6) and New York State Department of Health regulation 10 NYCRR 80.71.
- B. On or about May 23, 2011, a New York State Bureau of Narcotic Enforcement ("BNE") Agent requested that Respondent grant the BNE access to his office for purpose of inspecting medical and other records pertaining to the storage and dispensing of controlled substances. The BNE agent advised Respondent at the time of the request that he was under investigation for failing to report controlled substance dispensing information to the Department of Health.

1. Respondent violated Public Health Law Section 3385(1) and New York State Department of Health regulation 10 NYCRR 80.123 by failing to grant access to a representative of the Department of Health for the purpose of inspection of records required to be maintained under Article 33 of the Public Health Law.

C. Commencing in 2006 Respondent treated Patient A with appetite suppressant medication off and on for various periods of time. The most recent period of treatment was on or about and between March 24, 2011, and July 26, 2011. Respondent dispensed phentermine hydrochloride 37.5 mg. Patient A, a female, was 5 foot 7 and she weighed approximately 120 pounds on or about March 24, 2011. By July 24, 2011, her weight had decreased to 93 pounds 11 ounces. Respondent deviated from medically accepted standards in that :

1. Treatment with phentermine hydrochloride was contraindicated because Patient A was not obese. During the most recent period of treatment Patient A's weight ranged between low normal (BMI of 18.5) and underweight (BMI of 14.7).
2. Respondent failed to provide OPMC with a copy of Patient A's medical record in response to a written request for the record dated February 10, 2012.
3. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient A.
4. Respondent inappropriately dispensed phentermine hydrochloride in containers which lacked information required by Public Health Law Section 3331(4) and Department of Health Regulation 10 NYCRR 80.71, including dosing instructions and the date Respondent dispensed the medication.
5. Respondent dispensed excessive amounts of phentermine hydrochloride. The amount dispensed would be excessive even if Patient A was an appropriate candidate for the medication.
6. Respondent failed to provide Patient A with instructions regarding the dose of phentermine hydrochloride to take on a daily basis.

7. Respondent failed to appropriately monitor Patient A's blood pressure.
 8. Respondent dispensed controlled substances to Patient A, as set forth above, purportedly but not in fact in the good faith practice of medicine and intended to deceive.
- D. On or about and between September 26, 2007, and December 13, 2011, Respondent treated Patient B, a 47 year old female, with phentermine hydrochloride. Respondent deviated from medically accepted standards in that :
1. Respondent dispensed phentermine hydrochloride without adequate medical indication.
 2. Respondent dispensed excessive dosages of phentermine hydrochloride.
 3. Respondent failed to perform an adequate physical examination, including failing to take the patient's weight at the onset of treatment and at appropriate intervals during treatment.
 4. Respondent failed to order baseline laboratory tests and a baseline EKG .prior to the initiation of treatment with phentermine hydrochloride.
 5. Respondent failed to provide Patient B with instructions regarding the dose of phentermine hydrochloride to take on a daily basis.
 6. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient B.
- E. On or about and between May 5, 2007, and October 24, 2011, Respondent treated Patient C, a 36 year old female at the onset of treatment. Respondent deviated from medically accepted standards in that :
1. Respondent dispensed phentermine hydrochloride without adequate indication.

2. Respondent failed to perform an adequate physical examination, including failing to take the patient's weight at the onset of treatment and at appropriate intervals during treatment.
 3. Respondent failed to order baseline laboratory tests and a baseline EKG prior to the initiation of treatment with phentermine hydrochloride.
 4. Respondent failed to provide Patient C with instructions regarding the dose of phentermine hydrochloride to take on a daily basis.
 5. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient C
- F. On or about and between January 2, 2009, and December 10, 2011, Respondent treated Patient D at approximately 290 separate office visits. On or about November 16, 2011, the Director of the Office of Professional Medical Conduct issued an Order of Comprehensive Review of Patient Records ("Order") pursuant to N.Y. Public Health Law section 230(10)(a). With the authority of that Order, an investigator from the Office of Professional Medical Conduct requested a copy of the record for Patient D.
1. Respondent failed to comply with the Order in that he failed to provide the Office of Professional Medical Conduct with a record that included hundreds of office visits by Patient D, occurring on or about and between January 2, 2009, and December 24, 2010.
 2. Respondent failed to maintain a record that accurately reflected the evaluation and treatment of Patient D.
- G. Respondent maintained both handwritten and electronic records for Patients B, C, D, E, F, G, and H, respectively. With respect to the electronic records for each of Patients B through H:
1. Respondent knowingly and falsely represented, with intent to deceive:

- a. That he measured the blood pressure of each of Patients B through H, at each office visit.
 - b. That the blood pressure of each of Patients B through H, was 120/80 at each office visit.
2. Respondent failed to maintain a record which accurately reflects the evaluation of Patients B, C, D, E, F, G and H, respectively.

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:

1. Paragraphs C, C1, C3, C4, C5, C6, C7, D, D1, D2, D3, D4, D5, D6, E, E1, E2, E3, E4, E5, F, F2, G, and/or G2.

SECOND 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 facts of:

2. Paragraphs C, C1, C3, C4, C5, C6, C7, D, D1, D2, D3, D4, D5, D6, E, E1, E2, E3, E4, E5, F, F2, G, and/or G2.

THIRD THROUGH FIFTH 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:

3. Paragraph C and its subparagraphs.
4. Paragraph D and its subparagraphs.
5. Paragraph E and its subparagraphs.

SIXTH SPECIFICATION

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 facts of the following:

6. Paragraphs C, D, and E and their respective subparagraphs.

SEVENTH THROUGH NINTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

7. Paragraphs C and C8.
8. Paragraphs G, G1, and G1a.
9. Paragraphs G, G1, and G2b.

TENTH SPECIFICATION

**WILLFULLY OR GROSSLY NEGLIGENTLY FAILING TO COMPLY WITH
SUBSTANTIAL LAWS GOVERNING THE PRACTICE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16) by willfully or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine (to wit: Article 33 of the Public Health Law and regulations promulgated pursuant to the authority thereof) as alleged in the facts of the following:

10. Paragraphs A, B, C, D, E, F, and G and their respective subparagraphs.

ELEVENTH SPECIFICATION

FAILING TO MAKE RECORDS AVAILABLE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(28) by failing to respond within thirty days to written communications from the department of health and to make available any relevant records with respect to an inquiry or complaint , as alleged in the facts of:

11. Paragraphs C and C2.

TWELFTH SPECIFICATION

FAILING TO COMPLY WITH A COMPREHENSIVE MEDICAL REVIEW ORDER

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(15) by failing to comply with an order issued pursuant to Public Health Law Section 230(10)(a), as alleged in the facts of:

12. Paragraphs F and F1.

THIRTEENTH THROUGH SIXTEENTH SPECIFICATIONS
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 evaluation and treatment of the patient, as alleged in the facts of:

13. Paragraphs C and C3.
14. Paragraphs D and D6.
15. Paragraphs E and E5.
16. Paragraphs G and G2.

SEVENTEENTH SPECIFICATION
MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

17. Paragraphs A, B, C, D, E, F, and G and their respective subparagraphs.

DATE: September 25, 2012
Albany, New York

REDACTED

Peter D. Van Buren
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure

place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee, as that term is defined in Public Health Law 230(7), provides health care services. As set forth in Public Health Law 230(7), the term licensee shall include a physician, a physician

practicing under a limited permit, a medical resident, physician's assistant and specialist's assistant.

8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.