

May 2, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Carl P. Sherwin, M.D.
REDACTED

Re: License No. 207926

Dear Dr. Sherwin:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 13-125. This order and any penalty provided therein goes into effect May 9, 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: Peter Millock, Esq.
Nixon Peabody LLP
677 Broadway, 10th Floor
Albany, NY 12207

IN THE MATTER
OF
CARL P. SHERWIN, M.D.

CONSENT
ORDER

Upon the application of **CARL P. SHERWIN, M.D.**, (Respondent), in the attached Consent Agreement, 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 or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 4/30/2013

REDACTED

Arthur S. Hengerer, M.D.
Chair
State Board for Professional
Medical Conduct

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

**IN THE MATTER
OF
CARL SHERWIN, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

CARL SHERWIN, M.D., represents that all of the following statements are true:

That on or about August 19, 1997, I was licensed to practice as a physician in the State of New York, and issued License No. 207926 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.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with Seven (7) 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 First Specification (negligence on more than one occasion) insofar as I admit factual allegations A and A.2, A and A.3, B and B.5 and D and D.2 , in full satisfaction of the charges against me, and agree to the following penalty:

Three year suspension of my license to practice medicine, stayed.

Respondent shall enroll and successfully complete a continuing education program consisting of a minimum of 30 credit hours in the area of

prescribing practices, 17.5 credit hours in the area of recordkeeping and 20 credit hours in the area of ethics. This continuing education program is subject to the prior written approval of the Director, OPMC, and, subject to the additional requirements below, shall be completed within three years of the execution date of this document.

Pursuant to N.Y. Public Health Law § 230-a(9), I shall be placed on probation for a period of three (3) years, subject to the terms set forth in attached Exhibit B, and any extension and/or modifications thereto.

Respondent shall be permanently restricted from the treatment of chronic pain and/or pain management, and from prescribing methadone and/or suboxone.

Respondent shall not maintain a private solo practice of medicine.

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; and

That Respondent shall remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall : report to the department all information required by the Department to develop a public physician profile for the licensee; continue to notify the department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the department's secure web site or on forms prescribed by the department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to

N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law §230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found.

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 4/10/13

REDACTED

CARL SHERWIN, M.D.
RESPONDENT

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

DATE: April 9, 2013

REDACTED

PETER MILLOCK, ESQ.
Attorney for Respondent

DATE: 22 April 2013

REDACTED

JUDE B. MULVEY, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct

DATE: April 30, 2013

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
CARL SHERWIN, M.D.

STATEMENT
OF
CHARGES

Carl Sherwin, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 19, 1997, by the issuance of license number 207926 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care to Patient A at his office located at 155 Finney Boulevard, Malone, New York (Respondent's office) from on or about May 6, 2002 to on or about August 11, 2005. Respondent's care of Patient A deviated from acceptable standards of care in that:
1. Respondent failed to follow up on his notation that Patient A might be selling his prescriptions for Duragesic and/or failed to document such.
 2. Respondent prescribed a combination of Vicodin and Percocet to Patient A on June 1, 2005 without adequate medical indication and/or failed to document such.
 3. Respondent failed to maintain a medical record for Patient A in accordance with accepted medical standards and/or in a manner which accurately and/or adequately reflected his care of Patient A.
- B. Respondent provided medical care to Patient B at his office from on or about September 4, 2002 to on or about November 14, 2007. Respondent's care of Patient B deviated from acceptable standards of care in that:

1. Respondent inappropriately prescribed oxycontin to Patient B, and/or failed to document such.
 2. Respondent failed to follow up on his concern that Patient B was becoming addicted to oxycontin and/or failed to document such.
 3. Respondent inappropriately prescribed Methadone in conjunction with Avinza for Patient B.
 4. Respondent prescribed Duragesic in inappropriate dosages to Patient B.
 5. Respondent prescribed Marinol to Patient B without adequate medical indication and/or failed to document such.
 6. Respondent failed to refer Patient B to a pain clinic for alternate treatment modalities and/or failed to document such.
 7. Respondent failed to maintain a medical record for Patient B in accordance with accepted medical standards and/or in a manner which accurately and/or adequately reflected his care of Patient B.
- C. Respondent provided medical care to Patient C at his office from on or about March 15, 2002 to on or about December 20, 2007. Respondent's care of Patient C deviated from acceptable standards of care by inappropriately prescribing a combination of Duragesic and Methadone to Patient C.
- D. Respondent provided medical care to Patient D at his office from on or about September 10, 2001 to on or about December 21, 2007. Respondent's care and treatment of Patient D deviated from acceptable standards of care in that:

1. Respondent failed to accurately and/or adequately document Patient D's pain management.
2. Respondent prescribed oxycontin and Methadone to Patient D without adequate medical indication and/or in inappropriate dosages and/or failed to document such.
3. Respondent failed to follow up on his notation that Patient D was abusing and/or selling his prescriptions for oxycontin and/or Methadone.
4. Respondent continued to prescribe oxycontin and/or methadone for Patient D despite his concern that Patient D was abusing and/or selling such prescription.

E. Respondent provided medical care to Patient E at his office from on or about March 25, 2005 to on or about March 24, 2008. Respondent's care of Patient E deviated from acceptable standards of care in that:

1. Respondent prescribed Duragesic in inappropriate dosages to Patient E.
2. Respondent inappropriately prescribed a combination of Duragesic and Methadone to Patient E.
3. Respondent failed to discontinue Soma for Patient E before prescribing muscle relaxors for her and/or failed to document such.

F. Respondent provided medical care to Patient F at his office from on or about June 10, 1999 to on or about March 13, 2008. Respondent's care of Patient F deviated from acceptable standards of care in that:

1. Respondent failed to perform an adequate initial evaluation of Patient F and/or failed to document such.

2. Respondent prescribed Duragesic and/or Fentanyl to Patient F in inappropriate dosages.
3. Respondent failed to maintain a medical record for Patient F which accurately and/or adequately reflected his care.

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. The facts in Paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, C, D and D.1, D and D.2, D and D.3, D and D.4, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, F and F.3.

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. The facts in Paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, C, D and D.1, D and D.2, D and D.3, D and D.4, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, F and F.3.

THIRD THROUGH SEVENTH 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 care and treatment of the patient, as alleged in the facts of:

3. The facts in Paragraphs A and A.1, A and A.2, and/or A and A.3;
4. The facts in Paragraphs B and B.1, B and B.2, B and B.5, B and B.6 and/or B and B.7;
5. The facts in Paragraphs D and D.1, and/or D and D.2;
6. The facts in Paragraphs E and E.3.
7. The facts in Paragraphs F and F.1 and/or F and F.3.

DATE:

April 22
~~March~~, 2013
Albany, New York

REDACTED

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), 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.

PRACTICE MONITOR

10. Within thirty days of the Consent Order's effective date, 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. The practice monitor shall review all controlled substances prescriptions written and/or directed by Respondent within thirty-six (36) hours of the prescription.
 12. Respondent shall enroll in and successfully complete a continuing medical education course in the areas of prescription practices, ethics, and appropriate record keeping. This continuing education program is subject to the Director of OPMC's prior written approval.
 13. 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.