

October 4, 2011

CERTIFIED MAIL-RECEIPT REQUESTED

Gary Rafael Fishman, M.D.  
2100 Bartow Avenue  
Suite 216C  
Bronx, NY 10475

Re: License #226327

Dear Dr. Fishman:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 11-238. This Order of Conditions pursuant to Public Health Law Section 230 is effective October 11, 2011.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 1007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

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

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

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

IN THE MATTER  
OF  
GARY RAFAEL FISHMAN, M.D.

ORDER  
OF CONDITIONS  
PURSUANT TO  
N.Y. PUB. HEALTH  
LAW § 230

BPMC No. 11-238

Upon the application of GARY RAFAEL FISHMAN, M.D. (Licensee) in the attached Stipulation and Application for an Order of Conditions Pursuant to N.Y. Pub. Health Law § 230 (Application), which is made a part of this Order of Conditions Pursuant to N.Y. Pub. Health Law § 230 (Order), it is agreed that:

- the Application and its terms are adopted; and
- this Order shall be effective upon issuance by the Board, either by mailing of a copy of this Order by first class mail to Licensee at the address in the attached Application or by certified mail to Licensee's attorney, or upon facsimile transmission to Licensee or Licensee's attorney, whichever is first.

SO ORDERED.

DATE: 9/29/11

REDACTED

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

**IN THE MATTER  
OF  
GARY RAFAEL FISHMAN, M.D.**

**STIPULATION AND  
APPLICATION  
FOR AN ORDER  
OF CONDITIONS  
PURSUANT TO  
N.Y. PUB. HEALTH  
LAW § 230**

GARY RAPHAEL FISHMAN, M.D., represents that all of the following statements are true:

That on or about September 11, 2002, I was licensed to practice as a physician in the State of New York and issued License No. 226327 by the New York State Education Department.

My current address is 2100 Bartow Avenue, Suite 216c, Bronx, New York, 10475. I am affiliated with the following hospitals and/or facilities:

- Montefiore Medical Center, Bronx, New York.

I understand that the New York State Board for Professional Medical Conduct ("the Board") has investigated the issues set forth in attached Exhibit "A".

I request that the Board and the Director of the Office of Professional Medical Conduct ("the Director"), in reliance upon the results of the investigation to date and upon my representation that I have practiced medicine without incident for at least a year before this Application, conclude the investigation of these issues, provided I successfully and without incident comply with the Conditions set forth below. In consideration of the Board and the Director granting this Application, and upon the Board's election not to bring disciplinary charges against me, I agree that the Board and the Director shall issue an Order of Conditions Pursuant to N.Y. Pub. Health Law § 230. This Order shall remain in effect for three years and shall set the following *Conditions* upon my practice:

1. Licensee's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Licensee as defined in N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of this Order, and may subject Licensee to an action pursuant to N.Y. Pub. Health Law § 230.

2. Licensee 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. Licensee 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 Order's effective date and shall continue until the full term of the Order has run, and until any associated period of conditions and all terms and conditions have been completed and satisfied. My failure to comply with this condition, if proven and found at a hearing pursuant to N. Y. Pub. Health Law § 230(10), shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(29).
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; all current and past affiliations and/or privileges, with hospitals, institutions, facilities, medical practices, managed care organizations, and/or applications for such affiliations and/or privileges; 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. Licensee shall cooperate fully with OPMC in its administration and enforcement of this Order and in its investigation of Licensee. Licensee shall respond in a timely manner to all OPMC requests for written periodic verification of compliance with the terms of this Order, meet in person with the Director's designee, and respond promptly and provide all documents and information within Licensee's control to OPMC, as directed. This Condition shall take effect upon the effective date of the Order and shall continue while Licensee possesses a license.
5. Licensee shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Licensee shall ensure

- education, training and oversight of all office personnel involved in medical care, with respect to these practices.
6. Licensee shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients.
  7. The Director may review Licensee'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 or periodic visits with Licensee and staff at practice locations or OPMC offices.
  8. Licensee shall provide access for DOH personnel to Licensee's office(s) to verify Licensee's compliance with this Order. This access shall include, but not be limited to, on-site inspections, observation and interviews.
  9. Licensee shall enroll in and complete a continuing education program in areas as directed by the Office of Professional Medical Conduct. This continuing education program is subject to the Director's prior written approval and shall be completed within the first 90 days of the period of Conditions.

#### BILLING MONITOR

10. Licensee shall make available for review by a third party billing monitor any and all office and accounts records, as directed by OPMC. Such billing monitor shall be proposed by the Licensee and approved, in writing, by the Director, OPMC. Licensee shall fully cooperate in the review process. The review will determine whether the Licensee's medical billing and related documentation practices are conducted in a manner that complies with all federal, state, and local statutes and regulations regarding billing for medical services and is accurate, under all relevant circumstances, as to services rendered and the clinical bases for those services.
  - a. Licensee shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the billing monitor.
  - b. Licensee shall cause the billing monitor to report quarterly, in writing, to the Director of OPMC.
  - c. Any perceived deviation from proper billing practices or refusal to cooperate with the billing monitor shall be reported within 24 hours to OPMC.

11. The period of Conditions shall toll when Licensee is not engaged in active medical practice in New York State for 30 consecutive days or more. Licensee shall notify the Director, in writing, if Licensee is not currently engaged in or intends to leave active medical practice in New York State for 30 consecutive days or more, and Licensee shall then notify the Director again at least 14 days before returning to active medical practice in New York State. Upon Licensee's return to active medical practice in New York State, the period of Conditions shall resume and Licensee shall fulfill any unfulfilled 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.
12. Licensee shall comply with this Order, and all its terms and Conditions, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or violation of these terms, the Director and/or the Board may initiate a proceeding against Licensee under N.Y. Pub. Health Law § 230.

I stipulate that my failure to comply with these conditions shall constitute misconduct as defined in N.Y. Educ. Law § 6530(29).

I understand that nothing in this Application shall be construed as an admission by me of any act of alleged misconduct or as a finding of misconduct as to those issues referred to in Exhibit "A". I deny any acts of misconduct and reserve my right to assert all defenses I may have in any later or other proceeding.

I understand and agree that my failure to comply with, successfully complete, or satisfy any of the material conditions of this Order shall vest the Director with the authority, in the exercise of reasonable discretion, to vacate this agreement and shall permit the Director to pursue further investigation and/or prosecution of misconduct charges against me as to the issues set forth in Exhibit "A" to the full extent authorized by the Public Health Law and the Education Law.

I understand that an Order issued upon this Application does not bar prosecution for professional misconduct based upon allegations of violations of N.Y. Educ. Law § 6530 unrelated to the issues set forth in Exhibit "A," whether those alleged violations occurred before or after this Application. The Director may, at such time, also direct counsel to prepare charges that include allegations as to the issues set forth in Exhibit "A."

I agree that, if the Board grants this Application, the Chair of the Board shall issue an Order of Conditions in accordance with its terms. I further agree that the Department of Health shall notify the National Practitioner Data Bank and the Federation of State Medical Boards of this Order of Conditions pursuant to N.Y. Pub. Health Law § 230 and that the change in my licensure status is not disciplinary in nature. This Order of Conditions shall be posted on the Department of Health website(s).

I make this Application of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Application, I waive my right to contest the Order for which I apply, whether administratively or judicially, I agree to be bound by the Order, and I ask that the Board grant this Application

I understand and agree that the attorney for the Department of Health, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and 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.

9/14/11

DATE:

REDACTED

GARY RA~~PH~~HAEL FISHMAN, M.D.  
Licensee *F. P. S.*

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

IN THE MATTER  
OF  
GARY RAPHAEL FISHMAN, M.D.

STIPULATION AND  
APPLICATION  
FOR AN ORDER  
OF CONDITIONS  
PURSUANT TO  
N.Y. PUB. HEALTH  
LAW § 230

The undersigned agree to Licensee's attached Application and to the issuance of the proposed Order of Conditions Pursuant to N.Y. Pub. Health Law § 230.

DATE: 9/14/11

REDACTED

AMY KULB, ESQ.  
Jacobson and Goldberg & Kulb, LLP  
Attorney for Licensee *D.S.*

DATE: 9/21/11

REDACTED

DANIEL GUENZBURGER  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 9/28/2011

REDACTED

*JK* KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct