



New York State Board for Professional Medical Conduct

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

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

PUBLIC

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

September 8, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Lawrence Wilenkin, M.D.

REDACTED

Re: Resident

Dear Dr. Wilenkin:

Enclosed please find Order #BPMC 04-201 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect September 15, 2004.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

REDACTED


Ansel R. Marks, M.D., J.D.

Executive Secretary

Board for Professional Medical Conduct

Enclosure

cc: Wilfred T. Friedman, Esq.
Friedman and Mahdavian
36 West 44th Street, Suite 816
New York, NY 10036

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

IN THE MATTER
OF
LAWRENCE WILENKIN, M.D.

CONSENT
ORDER

BPMC No. 04-201

Upon the application of (Respondent) LAWRENCE WILENKIN, 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 SO ORDERED, and it is further

ORDERED, that this 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.

DATED: 9/7/04

REDACTED

MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

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

**IN THE MATTER
OF
LAWRENCE WILENKIN, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

LAWRENCE WILENKIN, M.D., representing that all of the following statements are true, deposes and says:

That I have been a "licensee," as that term is defined in N.Y. Public Health Law §230(7), at times in or before 2002. On or about July 10, 2002, I was issued limited permit No. P25926 by the New York State Education Department; I no longer hold a limited permit to practice medicine in New York. During periods in or before 2002, I practiced medicine in New York as part of a residency program in anesthesiology at Mount Sinai Medical Center, New York, N.Y. (For purposes of this document, I will be referred to as Respondent or as "Licensee," although I do not hold a medical license in New York State.) I do not hold and have not held a license to practice medicine in New York State issued by the New York State Education Department. I am currently not licensed as a physician, and do not hold a limited permit to practice medicine, in any jurisdiction. I am currently subject to Order #BPMC 04-45, which went into effect on March 15, 2004.

My current address is 39 Parkville Ave., #1F, Brooklyn, N.Y. 11230, 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 has charged me with two specifications of professional misconduct, Violating A Term of Probation (First Specification) and Being An Habitual User (Second

Specification). 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 allegations set forth in the First Specification of the Statement of Charges, attached Exhibit "A", in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Public Health Law §230-a(6), a limitation shall be placed precluding the issuance of any further license or registration to me to practice medicine in New York State (hereafter "preclusion") until the State Board for Professional Medical Conduct shall issue a Modification Order staying such limitation. I further agree that I may not practice medicine in New York as an exempt person or under any other legal authority and shall not seek licensure in New York until such time as I comply with all the requirements set forth in this document and am subject to a Modification Order, as further set forth below.

Upon compliance with all conditions of this Order, but no sooner than six months from the effective date of this Order:

- (1) I may petition the Board for a Modification Order staying the preclusion of my licensure or medical practice and that issuance of such a Modification Order is a condition precedent to my application for licensure;
- (2) That any Modification Order the Board may issue, in the exercise of its reasonable discretion, may include limitations, terms of probation, or further conditions on my practice, and may include limitations, terms or conditions beyond those I am already subject to pursuant to Order #BPMC 04-45;

- (3) That the Board will exercise its reasonable discretion upon my petition for a Modification Order through a Committee on Professional Conduct, after a proceeding in which I have met a burden of proof and persuasion as further set forth in attached Exhibit "B"; and
- (4) That the Committee's exercise of discretion shall not be reviewable by the Administrative Review Board.

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

That until and unless I am granted a license to practice medicine in the State of New York, I shall not engage in any practice of medicine in the State of New York, whether as a licensee, resident, holder of a permit, or exempt person, beginning upon the effective date of the Consent Order; and

That I shall return any and all official New York State prescriptions to the Bureau of Controlled Substances, and I shall surrender my Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within thirty days of the effective date of this Order. Further, within thirty days of returning these prescriptions and surrendering this registration, I shall provide the Director of OPMC ("Director") with written evidence, satisfactory to the Director, that I have so complied with this condition.

That I 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 me. I shall respond in a timely manner to all OPMC requests for written periodic verification of my compliance with this Order. I shall meet with a person designated by the Director of OPMC, as directed. I shall respond promptly and provide all documents and information within my control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and shall remain in effect.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

If I am charged with professional misconduct in the future, I hereby stipulate and agree to the admission into evidence at such proceeding, during the Department's case-in-chief, of this Application and Order, and/or related Modification Orders at the sole discretion of the Department (Petitioner).

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.

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.

DATED

7/30/04

REDACTED

LAWRENCE WILENKIN, M.D.
RESPONDENT

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

DATE: 8 24 04

REDACTED

WILFRED T. FRIEDMAN, ESQ.
Attorney for Respondent

DATE: August 26, 2004

REDACTED

MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 9/3/04

REDACTED

DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

**IN THE MATTER
OF
LAWRENCE WILENKIN, M.D.**

**STATEMENT
OF
CHARGES**

LAWRENCE WILENKIN, M.D., the Respondent, was authorized to practice medicine in New York State during periods in or about 2002 by issuance of a limited permit No. P25926 on or about July 10, 2002 by the New York State Education Department. (Respondent no longer holds a limited permit to practice medicine in New York.) Respondent has also been a "licensee," as that term is defined in N.Y. Public Health Law §230(7), at times in or before 2002 in that Respondent practiced medicine in New York as part of a residency program in anesthesiology at Mount Sinai Medical Center, New York, N.Y. Respondent is currently subject to Order #BPMC 04-45 , which went into effect on March 15, 2004.

FACTUAL ALLEGATIONS

- A. On May 9, 2004, Respondent violated Term Of Probation¹¹ of Order #BPMC 04-45, in that Respondent inappropriately obtained and injected himself with fentanyl at Mount Sinai Medical Center, New York, N.Y. Term #11 of Order #BPMC 04-45 , which went into effect on March 15, 2004, requires that "Respondent shall remain drug and alcohol free."
- B. During periods on or after March 15, 2004, Respondent was a habitual abuser of drugs, including fentanyl.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

VIOLATING A TERM OF PROBATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(29) by violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of:

1. Paragraph A.

SECOND SPECIFICATION

BEING AN HABITUAL ABUSER

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8) by being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice as alleged in the facts of the following:

2. Paragraphs A and B.

DATED: ⁹~~June~~ 3, 2004
New York, New York

REDACTED

~~Roy Nemerson~~
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

1. The preclusion of Respondent's licensure or practice of medicine shall be terminated only upon a showing to the satisfaction of a Committee on Professional Conduct (Committee) of the State Board for Professional Medical Conduct (Board) that Respondent has successfully complied with or completed a course of therapy and ongoing evaluation, which successful compliance or completion must include a determination by said Committee that Respondent is no longer incapacitated for the practice as a physician and **that Respondent is both fit and clinically competent to practice as a physician**. Respondent shall provide to the Office of Professional Medical Conduct (OPMC) a proposed treatment plan, for advice as to whether it is generally appropriate, but the determination of successful compliance with or completion of the course of therapy shall be made solely by the Committee, and shall include, but not be limited to, a determination that Respondent is no longer incapacitated for the active practice as a physician.

2. Upon Respondent's request, but no sooner than six months from the effective date of this Order, a Committee shall meet to hear and evaluate Respondent's showing, as referred to in paragraph 1 above, in support of a Modification Order. The Board will make reasonable attempts to convene a Committee within 90 days after Respondent's request, which shall not be perfected until the Director of the Office of Professional Medical Conduct receives all the documents Respondent is required to provide to satisfy the Conditions imposed upon him and as further set forth in paragraph 3 below. The procedural nature of said proceeding shall be determined by the Board through the discretion of the Director of OPMC upon consultation with Counsel, Bureau of Professional Medical Conduct (Counsel). Proceedings before said Committee shall **not** be in the nature of a hearing pursuant to New York Public Health Law §230, but shall instead be informal and intended only for the purpose of addressing any and all facts, evidence, information, circumstances, or issues which do or may relate to the advisability of terminating the preclusion of Respondent's licensure or medical practice. The Committee shall be given access to evidence including, but not limited to:

- a. Any and all evidence pertaining to Respondent's compliance with the conditions imposed.
- b. Any evidence which the Director or Counsel deems appropriate.

3. At the time that Respondent requests that a meeting of a Committee be scheduled, pursuant to paragraph 2, he shall provide the Director of OPMC with the following:

- a. The signed acknowledgment and curriculum vitae from the proposed sobriety monitor referred to in paragraph 5c.
- b. The signed acknowledgment and curriculum vitae from the proposed supervising physician referred to in paragraph 5d.
- c. The signed acknowledgment and curriculum vitae from the proposed health care professional referred to in paragraph 5e.
- d. Certified true and complete copies of all evaluation and treatment records relating to Respondent's substance abuse/dependence, psychological, psychiatric and/or mental health treatment whether in an in-patient, out-patient, after-care or consultation setting. These certified records shall be forwarded directly to OPMC from all treatment providers, facilities and evaluators. These records shall reflect any treatment and evaluation provided whether said treatment and evaluation occurred prior to or during the time this suspension is in effect. Such records shall include documentation of the results of all tests conducted to evaluate Respondent's fitness and clinical competence to practice medicine.
- e. Documentation of Respondent's participation in the program(s) of the Committee for Physicians' Health of the Medical Society of the State of New York or other equivalent program(s). Documentation shall include but not be limited to verification of compliance and results of forensically valid alcohol/drug screening.
- f. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
- g. A current, independent, in-depth chemical dependency and psychiatric evaluation by a board-certified psychiatrist specializing in addiction medicine.
- h. Upon request of the Director of OPMC, Respondent shall attend, participate in and cooperate with an interview with designated personnel from the OPMC.

Provision of the aforesaid documents will not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

4. At least fourteen (14) days prior to the scheduled date of the proceeding referred to in paragraph 2, Respondent shall provide OPMC with the following:

- a. Certified true and complete copies of records updating treatment and alcohol/drug screening since the date of the original submissions referred to in paragraph 3d.
- b. Evidence that Respondent has maintained adequate knowledge and competence to practice as a physician. Such evidence shall include documentation of continuing medical education and, if so requested by the Director of OPMC, a report of an independent evaluation of Respondent's medical knowledge and competence.

Submission of the aforesaid evidence shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

5. If the Chairperson of the Committee issues a Modification Order ("Order") finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice medicine, and therefore modifying the preclusion of Respondent's licensure or medical practice, the Order shall further impose a period of probation, pursuant to New York Public Health Law §230-a, with conditions to take effect upon Respondent's licensure and return to active practice in New York, during which Respondent's practice as a physician shall be subject to conditions imposed. **Respondent's practice shall be subject to such conditions for a period of no less than five years.** The minimum conditions shall include the following:

- a. Respondent shall be required to comply with the terms of a continuing after-care treatment plan that addresses the major problems associated with Respondent's illness.
- b. At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board-certified psychiatrist or other licensed mental health practitioner designated by the Director. Said practitioner shall report to the Director regarding Respondent's condition and Respondent's fitness or incapacity to practice as a physician.

- c. Respondent's sobriety will be monitored by a health care professional proposed by Respondent and approved in writing by the Director of OPMC. Said monitor shall not be a personal friend. Said monitor shall be familiar with Respondent's history of chemical dependence, with this suspension and with the terms of probation to be set forth. Said sobriety monitor shall acknowledge his/her willingness to comply with the monitoring by executing the acknowledgment provided by OPMC.
- i. Respondent shall remain drug and alcohol free.
 - ii. Said monitor shall see Respondent at least twice during each month.
 - iii. Said monitor shall direct Respondent to submit to unannounced tests of his blood, breath, saliva and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time such a test is positive or is refused by Respondent. Respondent shall avoid all substances which may cause positive urine drug screens such as poppy seeds, mouthwash, cough medicine, etc. Any positive result will be considered a violation of this Order.
 - iv. Said monitor shall report to OPMC any non-compliance with the imposed conditions.
 - v. Respondent shall ensure that said monitor submits to OPMC quarterly reports certifying Respondent's compliance or detailing Respondent's failure to comply with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
- d. Respondent shall be supervised in Respondent's medical practice by a licensed physician, proposed by Respondent and approved in writing by the Director of OPMC, in accordance with the conditions contained in or annexed to the Order. Said supervising physician shall be familiar with Respondent's history of impairment and with the Order and its conditions. Said supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. Said supervising physician shall be in a position to regularly observe

and assess Respondent's medical practice. The supervising physician shall oversee Respondent's prescribing, administering, dispensing, inventorying and wasting of controlled substances. Said supervising physician shall acknowledge his/her willingness to comply with the supervision by executing the acknowledgment provided by OPMC.

- i. Respondent shall ensure that said supervising physician submits to OPMC quarterly reports regarding the quality of Respondent's medical practice, any unexplained absences from work and certifying his compliance or detailing his failure to comply with each condition imposed.
 - ii. Said supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.
- e. Respondent shall continue in treatment with a health care professional, proposed by Respondent and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
- i. Respondent shall ensure that said treating health care professional or program submits to OPMC quarterly reports certifying that Respondent is complying with the treatment.
 - ii. Said treating health care professional shall report to OPMC immediately if Respondent is non-compliant with the treatment plan or demonstrates any significant pattern of absences.
 - iii. Said treating health care professional shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgment provided by OPMC.

6. The terms set out in paragraph 5 shall be the minimum probation terms, related to Respondent's fitness to practice, to be imposed on his practice, other terms may be added by the Committee, and the costs of complying with all such terms will be Respondent's responsibility. Any failure by Respondent to comply with the conditions imposed may result in disciplinary action being brought against him charging professional misconduct as defined by the New York State Education Law, including but not limited to NY Education Law §6530(29).

7. Upon any denial by the Committee of Respondent's petition for termination of the preclusion of his licensure and medical practice, Respondent shall not again request convening a Committee until a minimum period of nine (9) months has elapsed since such denial.

8. In addition to the terms set out in paragraph 5, and any other terms added by the Committee upon the termination of the preclusion of Respondent's licensure and medical practice, Respondent shall also be subject to the following standard terms of probation:

- a. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by the profession of medicine.
- b. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees.
- c. Respondent shall submit written notification of all sites of employment and/or medical practice to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
- d. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- e. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is 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].

- f. Any period of probation shall be tolled during periods in which Respondent is not engaged in the active practice as a physician in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice as a physician in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State. The tolling provision set forth in this paragraph may be waived by the Director of OPMC, in the Director's discretion.
- g. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- h. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by state rules and regulations regarding controlled substances.
- i. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which Respondent is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of non-compliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

AUTHORIZATION

I, LAWRENCE WILENKIN, M.D., authorize all programs in which I have enrolled as an alcohol or drug abuse patient to disclose to the New York State Department of Health, Office of Professional Medical Conduct the following information:

**ANY AND ALL RECORDS PERTAINING TO MY EVALUATION
AND TREATMENT WITH REGARD TO ALCOHOL AND/OR
DRUG ABUSE.**

The purpose of the disclosure authorized herein is to provide information which enables and facilitates the New York State Board for Professional Medical Conduct in its performance of duties and responsibilities pursuant to Section 230 of the New York Public Health Law.

I understand that, to the extent my records are protected under federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, such records cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it and that in any event this consent expires automatically upon final disposition of the relevant investigation and/or proceeding by the New York State Board for Professional Medical Conduct.

REDACTED

LAWRENCE WILENKIN, M.D.