

IN THE MATTER

OF

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

SAMIR, M.D.

COMMISSIONER'S
ORDER AND
NOTICE OF
HEARING

TO: SAMIR MONIR MOSTAFA, M.D. a/k/a MOSTAFA SAMIR, M.D.
1 A New Highway
Commack, New York, 11725

The undersigned, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by MOSTAFA SAMIR, M.D a/k/a SAMIR MOSTAFA, M.D. (henceforth: "Respondent"), constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12), that effective immediately, Respondent shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law §230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on October 4, 2012, at 10:00 a.m., at the offices of the New York State Health Department, 90 Church Street, New York, New York, 4th floor, and at such other adjourned

dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

September 25, 2012

REDACTED

NIRAV R. SHAH, M.D., M.P.H.
Commissioner of Health
New York State Health Department

Inquiries should be directed to:

Associate Counsel
Daniel Guenzburger
N.Y.S. Department of Health
Division of Legal Affairs
212-417-4450

SECURITY NOTICE TO THE LICENSEE

The proceeding will be held in a secure building with restricted access. Only individuals whose names are on a list of authorized visitors for the day will be admitted to the building

No individual's name will be placed on the list of authorized visitors unless written notice of that individual's name is provided by the licensee or the licensee's attorney to one of the Department offices listed below.

The written notice may be sent via facsimile transmission, or any form of mail, but must be received by the Department **no less than two days prior to the date** of the proceeding. The notice must be on the letterhead of the licensee or the licensee's attorney, must be signed by the licensee or the licensee's attorney, and must include the following information:

Licensee's Name _____ Date of Proceeding _____

Name of person to be admitted _____

Status of person to be admitted _____
(Licensee, Attorney, Member of Law Firm, Witness, etc.)

Signature (of licensee or licensee's attorney)

This written notice must be sent to:

New York State Health Department
Bureau of Adjudication
Riverview Center
150 Broadway - Suite 510
Albany, NY 12204-2719.
Fax: 518-402-0751

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