



***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*

William P. Dillon, M.D.  
*Chair*

Denise M. Bolan, R.P.A.  
*Vice Chair*

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

December 21, 2001

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Desider J. Rothe, M.D.  
653 Park Avenue  
New York, NY 10021

RE: License No. 113262

Dear Dr. Rothe:

Enclosed please find Order #BPMC 01-314 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect December 21, 2001.

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 Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Paul E. Walker, Esq.  
Peltz and Walker  
222 Broadway  
New York, NY 10038

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

**IN THE MATTER  
OF  
DESIDER J. ROTHE, M.D.**

**CONSENT  
ORDER**

BPMC No. 01-314


Upon the proposed agreement of DESIDER J. ROTHE, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 12/20/01

  
WILLIAM P. DILLON, 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  
DESIDER J. ROTHE, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

STATE OF NEW YORK )  
COUNTY OF NEW YORK )      ss.:

DESIDER J. ROTHE, M.D., (Respondent) being duly sworn, deposes and says:

That on or about August 2, 1972, I was licensed to practice as a physician in the State of New York, having been issued License No. 113261 by the New York State Education Department.

My current address is 653 Park Avenue, New York, New York, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with four specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I agree not to contest the charges, in full satisfaction of the charges against me, and in full satisfaction of any charges which could arise out of the two malpractice cases listed in Exhibit "C". I hereby agree to the following penalty:

A censure and reprimand shall be imposed on my license to practice medicine in the State of New York. In addition, I shall be subject to a two year period of probation under the terms set forth in the appended Exhibit "B".

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

That, except during periods of actual suspension, Respondent shall maintain active registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent.

Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon

the effective date of the Consent Order and will continue while the licensee possesses his/her license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

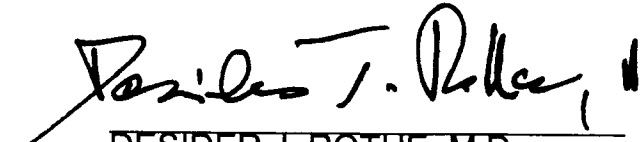
I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under

duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

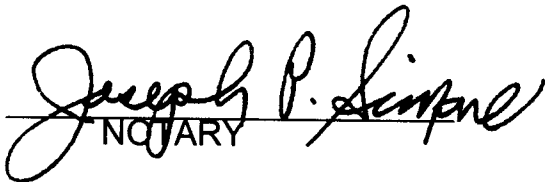
  
DESIDER J. ROTHE, M.D.  
RESPONDENT

DATED 12/6/01

Sworn to before me

on this 6<sup>th</sup> day of

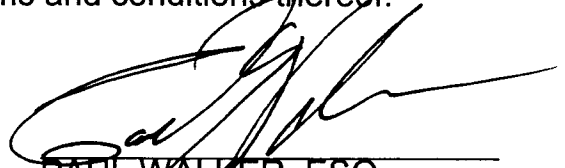
December 2001

  
NOTARY


**Joseph P Simone**  
Notary Public  
State Of New York, Westchester  
Lic 01SI6042027  
Commission Expires May 15, 2002

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 12/4/01

  
PAUL WALKER, ESQ.  
Attorney for Respondent

DATE: 12/7/01

  
TERRENCE SHEEHAN  
Associate Counsel  
Bureau of Professional  
Medical Conduct

DATE: 12/18/01

  
DENNIS J. GRAZIANO  
Director  
Office of Professional  
Medical Conduct

**IN THE MATTER**  
**OF**  
**DESIDER J. ROTHE , M.D.**

**STATEMENT**  
**OF**  
**CHARGES**

DESIDER J. ROTHE, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 2, 1972, by the issuance of license number 113261 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Between on or about April 19, 1990 and on or about March 29, 1993 Respondent rendered obstetrical/gynecological care to Patient A at Respondent's medical office, 653 Park Ave, New York, New York (The names of Patients are contained in the attached Appendix). Respondents treatment of Patient A deviated from accepted standards of medical practice in the following respects:
1. Respondent failed to perform and document adequate physical examinations including breast examinations and periodic pelvic examinations describing the size of the uterus and ovaries.
  2. Respondent failed to order a sonogram in a timely fashion.

**EXHIBIT A**



3. Respondent failed to maintain a record for Patient A which accurately reflects the evaluation and treatment he provided including patient history, physical examination, treatment plan and referral for indicated diagnostic tests.

B. Between on or about April 13, 1989 and on or about February 28, 1991 Respondent rendered obstetrical/gynecological care to Patient B at Respondent's medical office. Respondent's treatment of Patient A deviated from accepted standards of medical practice in the following respects:

1. Respondent failed to document uterine size, fetal heart tones and values for urine protein and glucose on each prenatal visit.
2. Respondent failed to appropriately manage Patient B's complaint of a breast lump.
3. Respondent failed to maintain a record for Patient A which accurately reflects the evaluation and treatment he provided including patient history, physical examination, treatment plan and referral for indicated diagnostic tests.

## **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 two or more of the following paragraphs:

1. A and A(1) - A(3) and B and B(1) - B(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 two or more of the following paragraphs:

2. A and A(1) - A(3) and B and B(1) - B(3).

**THIRD AND FOURTH SPECIFICATION**

**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 paragraphs:

- 3. A and A.3
- 4. B and B.3

DATED: November , 2001  
New York, New York

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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

## EXHIBIT "B"

### Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).
2. Respondent shall submit written notification 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 days of each action.
3. 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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine 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 of medicine 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.
5. 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 his/her staff at practice locations or OPMC offices.
6. 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.

## PRACTICE MONITOR

7. Within thirty days of the effective date of the order, 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.
  - 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 25) 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.
8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance 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.