



***New York State Board for Professional Medical Conduct***

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

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NYS Department of Health*

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NYS Department of Health*

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*Office of Professional Medical Conduct*

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

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

**PUBLIC**

April 22, 2004

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

Mark H. Fleischer, M.D.  
1694 Highland Avenue  
Rochester, NY 14618

Re: License No. 126371

Dear Dr. Fleischer:

Enclosed please find Order #BPMC 04-86 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect April 29, 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,

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

Enclosure

cc: Terrance Hoffman, Esq.  
4629 Onondaga Boulevard  
Syracuse, NY 13219-3390

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

IN THE MATTER  
OF  
MARK H. FLEISCHER, M.D.

CONSENT  
ORDER

BPMC No. 04-86

Upon the application of (Respondent), Mark H. Fleischer, M.D., in the attached Consent Agreement and Order, which is made a part of this Consent Order; it is

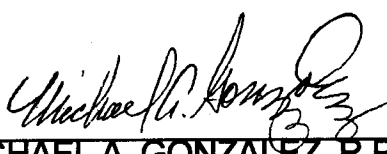
ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED; and it is further

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: 4/21/04

  
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  
MARK H. FLEISCHER, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

Mark H. Fleischer, M.D., representing that all of the following statements are true, deposes and says:

That on or about March 5, 1976, I was licensed to practice as a physician in the State of New York, and issued License No. 126371 by the New York State Education Department.

My current address is 1694 Highland Avenue, Rochester, New York 14618, 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.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I plead no contest to the First and Second Specifications, in full satisfaction of the charges against me. I hereby agree to the following penalty:

Pursuant to §230-a(2) of the Public Health Law, my license to practice medicine in the State of New York shall be suspended for a period of 60 months, the duration of said suspension to be stayed.

Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of 60 months, subject to the terms set forth in attached Exhibit "B."

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

That Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed 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 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 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.

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).

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 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.

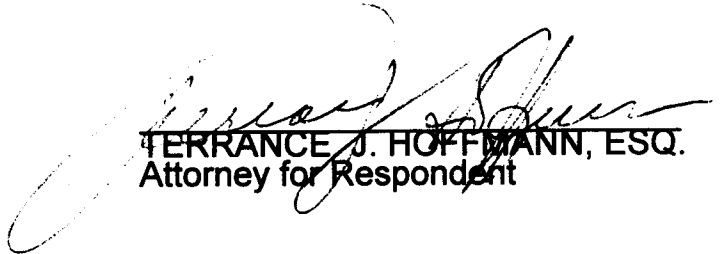
I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, 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: 4.1.04

  
\_\_\_\_\_  
MARK H. FLEISCHER, M.D.,  
RESPONDENT


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

DATED: 4-1-04



TERRANCE J. HOFFMANN, ESQ.  
Attorney for Respondent

DATED: 4/6/04



JEFFREY J. CONKLIN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATED: 4/20/04



DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
MARK H. FLEISCHER

STATEMENT  
OF  
CHARGES

Mark H. Fleischer, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 5, 1976, by the issuance of license number 126371 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A (hereinafter identified in Appendix A) at his office located at 300 White Spruce Blvd., Rochester, New York, from October 11, 2001, through December 9, 2001, for, among other things, diffuse pain in the back and joints, dizziness, nausea, fatigue, constipation, itching, and daytime sleepiness. Respondent's care and treatment of Patient A failed to meet accepted standards of care in that:
1. Respondent prescribed rapidly escalating dosages of OxyContin to treat Patient A's conditions without the appropriate indications therefor;
  2. Respondent, on various occasions, failed to maintain a record for Patient A in accordance with accepted standards of care; and
  3. Respondent failed to offer Patient A other pain management modalities, including prescription of other opiate analgesics.

B. Respondent provided medical care to Patient B (hereinafter identified in Appendix A attached hereto) at his office from December 22, 1998, through July 2001, for, among other things, chronic abdominal pain. Respondent's care and treatment of Patient B failed to meet accepted standards of medical care in that:

1. Respondent prescribed rapidly escalating dosages of OxyContin to treat Patient B's conditions without the appropriate indications therefor;
2. Respondent, on various occasions, failed to maintain a record for Patient B in accordance with accepted standards of care; and
3. Respondent failed to offer Patient B other pain management modalities, including prescription of other opiate analgesics.

C. Respondent provided medical care to Patient C (hereinafter identified in Appendix A attached hereto) at his office from April 2, 1998, through October 2001, for, among other things, chronic neck pain. Respondent's care and treatment of Patient C failed to meet accepted standards of medical care in that:

1. Respondent prescribed rapidly escalating dosages of Vicoprofen and OxyContin to treat Patient C's conditions without the appropriate indications therefor;
2. Respondent, on various occasions, failed to maintain a record for Patient C in accordance with accepted standards of care; and
3. Respondent failed to offer Patient C other pain management



modalities, including prescription of other opiate analgesics.

D. Respondent provided medical care to Patient D (hereinafter identified in Appendix A attached hereto) at his office from November 30, 2000, through November 6, 2001, for, among other things, chronic back pain. Respondent's care and treatment of Patient D failed to meet accepted standards of medical care in that:

1. Respondent prescribed rapidly escalating dosages of OxyContin to treat Patient B's conditions without the appropriate indications therefor; and
2. Respondent, on various occasions, failed to maintain a record for Patient B in accordance with accepted standards of care.

### **SPECIFICATIONS OF CHARGES**

#### **FIRST SPECIFICATION**

(Negligence on More than One Occasion)

Respondent is charged with professional misconduct under New York Education Law Section 6530(3) by reason of his having practiced the profession with negligence on more than one occasion, in that Petitioner charges the following:

1. The facts as alleged in paragraphs A and A1, and/or A and A3; B and B1, and/or B and B3; C and C1, and/or C and C3; and D and D1.

**SECOND SPECIFICATION**

(Failing to Maintain Accurate Records)

Respondent is charged with professional misconduct under New York Education Law Section 6530 (32) by reason of failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patients, in that Petitioner charges the following:

1. The facts as alleged in paragraphs A and A2; B and B2; C and C2; and D and D2.

DATED: *April 6*  
March, 2004  
Albany, New York

*Peter D. Van Buren*  
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 New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees.
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 such 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, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (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 thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms.
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 and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.

8. 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**

9. 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 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.
10. Respondent shall enroll in and complete a continuing education program in the area of pain management for a minimum of 40 credit hours. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.
11. Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines in necessary.
  - a. Respondent shall cause the therapist to submit a proposed treatment and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advise, or displays any symptoms of a suspected or actual relapse.

- b. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
12. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or 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.