



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

March 17, 2000

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David J. Fleiss, M.D.  
901 Fifth Avenue  
New York, NY 10021

RE: License No. 127297

Dear Dr. Fleiss:

Enclosed please find Order #BPMC 00-84 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **March 17, 2000**.

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.

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

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management  
New York State Department of Health  
Corning Tower, Room 1258  
Empire State Plaza  
Albany, New York 12237

Sincerely,



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

Enclosure

cc: Kevin D. Porter, Esq.  
Thurm & Heller  
261 Madison Avenue, Suite 600  
New York, NY 10016-2303

Jean Bresler, Esq.

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

IN THE MATTER  
OF  
DAVID JONATHAN FLEISS, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER  
BPMC #00-84

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

DAVID JONATHAN FLEISS, M.D., (Respondent) being duly sworn,  
deposes and says:

That on or about July 1, 1976, I was licensed to practice as a physician in the State of New York, having been issued License No. 127297 by the New York State Education Department.

My current address is 901 Fifth Avenue, New York, NY, 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 seven specifications of professional misconduct.

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

I do not contest the charges in paragraphs A and D of the Factual Allegations, nor do I contest the Specifications of Charges that relate to these two sections, in full satisfaction of the charges against me. I hereby agree to the following penalty:

1. My medical license shall be permanently limited so that I shall not be authorized to perform the following:
  - a. Spinal surgery;

- b. Joint replacement surgery, major or minor;
  - c. Pediatric surgery; except as provided in letter "e" below
  - d. Cancer surgery, including surgery for suspected malignancies;
  - e. Treatment of emergencies and/or trauma except those treatments that require arthroscopic surgery. A further limitation shall include a prohibition on performing open reduction and internal fixation of the spine, the hip, the femoral shaft and the tibial shaft. The ability to perform open reductions and internal fixations is limited to the upper extremity, knee, ankle and foot.
2. That my license to practice medicine be suspended for three years stayed, and that I be placed on three years probation the terms of which are set forth in Exhibit B annexed hereto and made a part hereof.
  3. That I agree to pay a fine of (\$20,000.00), twenty thousand dollars.

Unless otherwise specified herein, the fine is payable in full within thirty (30) days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 1245  
Albany, New York 12237.

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 current 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 continuing at all times thereafter; 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 at all times thereafter.

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)(McKinney Supp 2000).

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.

AFFIRMED:

DATED 2/14/00

David Jonathan Fleiss, M.D.  
David Jonathan Fleiss, M.D.  
RESPONDENT

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

DATE: 2/4/00

Kevin O. Porter  
Kevin Porter, ESQ.  
Attorney for Respondent

DATE: 3/6/2000

Jean Bresler  
Jean Bresler  
Associate Counsel  
Bureau of Professional  
Medical Conduct

DATE: March 8 2000

Anne F. Saile  
ANNE F. SAILE  
Director  
Office of Professional  
Medical Conduct



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

IN THE MATTER  
OF  
DAVID JONATHAN FLEISS, M.D.

CONSENT  
ORDER

Upon the proposed agreement of DAVID JONATHAN FLEISS, 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: 3/13/2000


  
WILLIAM P. DILLON, M.D.  
Chair  
State Board for Professional  
Medical Conduct

EXHIBIT "A"

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

IN THE MATTER  
OF  
DAVID JONATHAN FLEISS, M.D.

STATEMENT  
OF  
CHARGES

DAVID JONATHAN FLEISS, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1976, by the issuance of license number 127297 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about November 7, 1995, the Respondent performed a total hip replacement procedure on Patient A (all Patients are identified in Appendix A). On January 3, 1996, Respondent noted that the hip replacement had dislocated and admits the patient to Beth Israel Medical Center North Division, (BIMCN) where Respondent performed a revision of the left total hip replacement on January 4, 1996. On January 8, 1996, Respondent noted that the left hip had again dislocated. Thereafter, the care of Patient A was transferred to another surgeon. Respondent's care and treatment of Patient A deviated from acceptable medical standards in that Respondent:
1. Failed to appropriately record the patient's condition and the treatment rendered.
  2. Failed to obtain appropriate surgical assistance while performing the revision of the total hip replacement.

3. Performed a total hip revision without obtaining appropriate training in the performance of this procedure.
4. Inserted Dr. Harwin's name as first surgical assistant when in fact he was not.

B. On or about August 16, 1994, Respondent performed an arthroscopic procedure on patient B's left knee at BIMCN. On August 18, 1994, Respondent noted in his office record, slight pain and that the wounds are clean. On September 4, 1994, the Respondent referred Patient B to the emergency department of BIMCN, at which time, the patient was admitted to Respondent's service with purulent drainage from the knee, since August 19, 1994. An arthroscopic debridement and lavage was performed on September 4, 1994 by Dr. Levy. Respondent's care and treatment of Patient B deviated from acceptable medical standards in that Respondent:

1. Despite of the fact that Respondent examined Patient B in the emergency room on September 4, and admitted the patient to the hospital, he inappropriately failed to perform the operative procedure on that date.

C. Patient C was treated by the Respondent at BIMCN on November 30, 1993. Respondent's operative report indicated that he performed an arthroscopic excision of a tear of the anterior glenoid labrum, arthroscopic subacromial decompression, and excision of the lateral clavicle. Respondent's care and treatment of Patient C deviated from acceptable medical standards in that Respondent:

1. Failed to appropriately position the patient, and/or note the position of the patient, during the operative procedure.
2. Failed to appropriately pad the patient's lower extremities during the operative procedure.
3. Took an unacceptably long time to perform the operative procedure and thereby unnecessarily exposed the patient to risk of harm.

D. Respondent first saw Patient D at his private office on August 4, 1997. Patient D was an obese, hypertensive, seventy-one year old women with arterial vascular disease. Respondent operated on Patient D, at BIMCN, on October 7, 1997. Respondent's operative note indicated that he performed a right total knee replacement, as well as an open reduction and internal fixation, with plate and screws, of a supracondylar fracture of the right distal femur which occurred during surgery. Respondent entered notes into the chart, regarding certain participants in the Patient's care and regarding certain aspects of the Patient's condition, which were inconsistent with other entries in the chart. Respondent's care and treatment of Patient D deviated from acceptable medical standards in that Respondent:

1. Undertook to perform a total knee replacement on Patient D, without appropriate assistance, when in fact, he was not competent to manage this procedure safely alone.

2. Applied a tourniquet to this patient during surgery for an inappropriately long period of time, thereby exposing her to risk of injury.
3. Failed to accurately note the patient's condition post-operatively.
4. Failed to read x-rays taken on October 22, 1997 in accordance with acceptable medical standards.
5. Wrote an admission note after performing surgery and, inappropriately dated the note as if it was written at the time of admission.

## **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)(McKinney Supp. 2000) 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:

1. Paragraphs A, A(1) through A(4), B, B(1), C, C(1) through C(3), D, and D(1) through D(5).

## **SECOND SPECIFICATION**

### **INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 2000) 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:

2. Paragraphs A, A(1) through A(4), B, B(1), C, C(1) through C(3), D, and D(1) through D(5).

## **EIGHTH SPECIFICATION**

### **GROSS NEGLIGENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 2000) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

3. Paragraphs A, A(1) through A(8), A(10), A(11), B, B(1), B(2), B(3), C, C(1) through C(4), D, and D(1) through D(9).

## **NINTH SPECIFICATION**

### **GROSS INCOMPETENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 2000) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

4. Paragraphs A, A(1) through A(8), A(10), A(11), B, B(1), B(2), B(3), C, C(1) through C(4), D, and D(1) through D(9).

**TENTH THROUGH THIRTEENTH SPECIFICATIONS**  
**FAILURE TO MAINTAIN RECORDS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §(32)(McKinney Supp. 2000) 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:

5. Paragraphs A, A(1), A(4),
6. Paragraphs C, C(1) .
7. Paragraphs D, D(3) and D(4) through D(5).

DATED: February , 2000  
New York, New York

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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

**EXHIBIT B**  
**TERMS OF PROBATION**

1. DAVID JONATHAN FLEISS, M.D. (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 his profession.
  
2. Respondent shall notify the Department of Health, in writing, of the following: a full description of any employment and practice; professional and residential addresses and telephone numbers, both within and outside New York State; and the existence of any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days thereafter. Respondent shall address this correspondence to: Director, Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299.
  
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 the Office of Professional Medical Conduct (hereafter "Director), 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 has informed the Office of Professional Medical Conduct (hereafter "OPMC") that he currently maintains hospital privileges and performs surgery in New York at Beth Israel Medical Center, St. Vincent's Medical Center, and The Center for Specialty Care. Respondent shall notify the Department of Health, in writing, at the address set forth in paragraph 2, supra, of the name and address of all hospitals and/or facilities and/or centers at which he has privileges, practices, and/or is affiliated; the status of his hospital affiliations and privileges; any changes in his status and/or privileges at any of his affiliations; and any additional hospitals, facilities and/or centers he joins, within thirty days thereafter.
  
6. Respondent shall fully cooperate in every respect with OPMC in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent's professional performance may be reviewed by the Director. Respondent shall respond promptly to each and every request by OPMC for written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director, and shall promptly provide any and all documents and information within Respondent's control, as directed by OPMC. Further, a review of Respondent's professional performance by the Director 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 staff at practice locations or OPMC offices.
  
7. Respondent shall maintain legible and complete office and hospital medical records which accurately reflect the evaluation and treatment of his patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances. The Respondent's office record shall include a copy of an operative report for each patient upon whom Respondent performs and/or assists in a surgical procedure. Additionally,

Respondent's office record for each patient admitted to a hospital shall include a copy of the face sheet, admission and discharge summary, and operative report from the patient's hospital record.

8. Respondent shall practice medicine, as limited by the instant Order, only when monitored by a licensed physician ("practice monitor"), board-certified in an appropriate specialty, and approved, in writing, by the Director. Respondent shall propose the physician to function as Respondent's practice monitor to the Director for approval; the Director shall exercise reasonable discretion in the approval of the practice monitor; and the Director's written approval of the practice monitor shall constitute a condition of the Respondent's practice beginning 30 days after the effective date of this Order. The practice monitor shall not be a family member, personal friend, or in a professional relationship that could pose a conflict with monitoring responsibilities. Respondent shall disclose any such potential conflicts to the Director at the time Respondent proposes the practice monitor, or as soon thereafter as a potential conflict arises. Respondent shall ensure that the practice monitor is familiar with the Order and the monitoring terms, and is willing to report to OPMC.
  - a. The Respondent shall, on a quarterly basis, provide said monitor with a complete list of all surgeries and/or surgical procedures performed by the Respondent or in which the Respondent participated and/or assisted. The Respondent shall include the name of the patient, the date of the surgery or procedure, along with the dates of admission and discharge from the hospital or center, the name of the hospital or center at which the surgery or procedure was performed, and the type of surgery or procedure performed.
  - b. The practice monitor shall examine and review (30 percent) of Respondent's surgical cases, including the complete hospital chart and Respondent's office record prior to Respondent performing surgery. The

practice monitor shall evaluate whether Respondent has sufficient experience to perform the proposed surgery. The monitor shall review all known complications related to the surgeries with the Respondent and evaluate whether Respondent is competent to appropriately handle known possible complications. The monitor shall review with the Respondent his plan for obtaining appropriate back up and support where the practice monitor deems it appropriate.

- c. Respondent shall make available to the monitor any and all records, and access to his 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 regularly examine and review no less than 100% of Respondent's surgical cases, including the complete hospital chart and Respondent's office record, per quarter (every three months). Respondent's medical practice shall be conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation(s) of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
  - d. Said monitoring physician shall submit to OPMC quarterly reports regarding the quality of the Respondent's medical and surgical practice, including any intra and/or post-operative complications, departures from accepted standards of practice, patient deaths, and requests for surgical assistance made by the Respondent either during or after an operative procedure. The monitor shall also, in said quarterly report, certify the Respondent's compliance with the terms and conditions of monitoring.
9. Respondent shall be solely responsible for all expenses associated with supervision and monitoring, including fees, if any, to the supervising and monitoring physician(s).

10. 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 prior to Respondent's practice after the effective date of this Order.
  
11. 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.

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UNCLASSIFIED  
CONTROLLED