



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.
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NYS Department of Health*

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*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

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Vice Chair

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

March 20, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Brian A. Goldweber, M.D.
11 Woodstone Rise
Pittsford, New York 14534

RE: License No. 139943

Dear Dr. Goldweber:

Enclosed please find Order #BPMC 02-84 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect March 20, 2002.

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,

A handwritten signature in black ink, appearing to read "Ansel R. Marks". The signature is stylized and written in a cursive-like font.

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

Enclosure

cc: Thomas G. Smith, Esq.
Harter, Secrest and Emery, L.L.P.
1600 Bausch and Lomb Place
Rochester, NY 14604-2711

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

IN THE MATTER
OF
BRIAN A. GOLDWEBER, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC No. 02-84

Brian A. Goldweber, M.D., representing that all of the following statements are true, states:

That on or about October 5, 1979, I was licensed to practice as a physician in the State of New York, and issued License No. 139943 by the New York State Education Department.

My current address is 11 Woodstone Rise, Pittsford, NY 14534, 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 seventeen 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 admit guilt to the seventeenth specification, in full satisfaction of the charges against me, and agree to the following penalty:

A censure and reprimand and a twenty thousand (\$20,000) fine.

Unless otherwise specified herein, the fine is payable in full within ninety (90) 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 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 2/18/02


BRIAN A. GOLDWEBER, M.D.
RESPONDENT

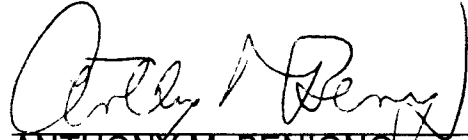
The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: Feb. 14, 2002



THOMAS G. SMITH, ESQ.
Attorney for Respondent

DATE: 2/25/02



ANTHONY M. BENIGNO
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 3/15/02



DENNIS J. GRAZIANO
Director
Office of Professional
Medical Conduct

IN THE MATTER
OF
BRIAN A. GOLDWEBER, M.D.

STATEMENT
OF
CHARGES

Brian A. Goldweber, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 5, 1979, by the issuance of license number 139943 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. The Respondent fraudulently answered the following question on his application to Ellenville Regional Hospital dated July 6, 2001: "Has your license to practice medicine or your DEA registration in any jurisdiction ever been limited, suspended or revoked or is any such action pending?" by responding "no." In fact, the New York State Board for Professional Medical Conduct issued BPMC Order No. 99-77 which suspended his license for three years, with the suspension stayed conditioned on full compliance with the monitoring terms. Additionally, Respondent's license was limited allowing him to practice medicine "...only when supervised in his/her medical practice for a period of one year of the effective date of this order." Respondent's medical license was further limited whereby, "Upon the completion of a one year period of practice supervision, Respondent shall practice medicine only when monitored by a licensed physician, preferably board certified in an appropriate specialty, (" practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC for the remainder of the period of stayed suspension."

- B. The Respondent fraudulently answered the following question on his application to Ellenville Regional Hospital dated July 6, 2001: "Have your privileges at any hospital ever been suspended, diminished, revoked or not renewed, voluntarily or involuntarily, or is any such action pending?" by responding "no." In fact, Rochester General Hospital limited his privileges on May 5, 1998 by not allowing him to take call, not allowing him to provide anesthesia for major vascular cases, cerebral vascular case and cases involving children less than five years of age. Additionally, Rochester General Hospital required him to take a course in airway management, monitored his performance by the Chairman of the Department of Anesthesiology and had him attempt to re-enter the American Board of Anesthesiology Certification Program by taking the In-Training examination at the earliest possible opportunity. Respondent acknowledged these limitations in writing by signing an agreement on April 27, 1998 co-signed by the Chief of Anesthesiology on May 5, 1998.
- C. Respondent fraudulently affirmed on his application to Ellenville Regional Hospital dated July 6, 2001 that, "...the information furnished by me to the Medical Staff is true to the best of my knowledge and is furnished in good faith."
- D. On August 20, 2001 Respondent was interviewed by OPMC staff. Respondent was asked if his privileges had been diminished or if there had been any limitations placed on his privileges at Rochester General Hospital. Respondent replied no. Respondent was asked, specifically, if his ability to perform anesthesia in cardiac, vascular and children less than five years old had been limited. Respondent replied that the group wanted to punish them financially and that these three areas were considered moneymakers. He added that the group placed these limitations on him and not the hospital.

Respondent was asked if he received written correspondence regarding the practice limitation. He denied receiving any correspondence.

- E. The Respondent violated New York State Public Health Law §2805(k) by failing to provide to Ellenville Regional Hospital the substance of the findings of the New York State Board for Professional Medical Conduct's disciplinary action against him by his responses to the above mentioned questions in paragraphs A, B and C.
- F. The Respondent fraudulently answered the following question on his application to Medical Doctor Associates, a locum tenens company, dated July 6, 2001: "Has your license to practice as a physician in any jurisdiction ever been limited, suspended, revoked, voluntarily surrendered, or placed under investigation or probation?" By answering "no". In fact, the New York State Board for Professional Medical Conduct issued BPMC Order No. 99-77 which suspended his license for three years, with the suspension stayed conditioned on full compliance with the monitoring terms. Additionally, Respondent's license was limited allowing him to practice medicine "...only when supervised in his/her medical practice for a period of one year of the effective date of this order." Respondent's medical license was further limited whereby, "Upon the completion of a one year period of practice supervision, Respondent shall practice medicine only when monitored by a licensed physician, preferably board certified in an appropriate specialty, (" practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC for the remainder of the period of stayed suspension."
- G. The Respondent fraudulently answered the following question on his application to Medical Doctor Associates, a locum tenens company, dated July 6, 2001: "Have your privileges at any hospital ever been suspended,

diminished, provoked, withdrawn, or placed under any other disciplinary actions for peer review, or have they ever not been renewed for any reason other than your own voluntary decision not to practice their any longer?" By answering "no." In fact, Rochester General Hospital limited his privileges on May 5, 1998 by not allowing him to take call, not allowing him to provide anesthesia for major vascular cases, cerebral vascular case and cases involving children less than five years of age. Additionally, Rochester General Hospital required him to take a course in airway management, monitored his performance by the Chairman of the Department of Anesthesiology and had him attempt to re-enter the American Board of Anesthesiology Certification Program by taking the In-Training examination at the earliest possible opportunity. Respondent acknowledged these limitations in writing by signing an agreement on April 27, 1998 co-signed by the Chief of Anesthesiology on May 5, 1998.

- H. Respondent fraudulently declared on his application to Medical Doctor Associates dated July 6, 2001 that, "...the above statements and particulars are true and that I have not knowingly suppressed or misstated any material facts."
- I. In an addendum provided to Medical Doctor Associates dated July 13, 2001, Respondent fraudulently represented that, "I agreed to a one year period of monitoring, which has concluded, as well as periodic chart review, and a six month review program at the University of Buffalo. All requirements have been met thus far." In fact, the New York State Board for Professional Medical Conduct issued BPMC Order No. 99-77 which suspended his license for three years, with the suspension stayed conditioned on full compliance with the monitoring terms. Additionally, Respondent's license was limited allowing him to practice medicine "...only when supervised in

his/her medical practice for a period of one year of the effective date of this order." Respondent's medical license was further limited whereby, "Upon the completion of a one year period of practice supervision, Respondent shall practice medicine only when monitored by a licensed physician, preferably board certified in an appropriate specialty, (" practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC for the remainder of the period of stayed suspension."

SPECIFICATIONS OF MISCONDUCT

FIRST THROUGH EIGHTH SPECIFICATIONS

PRACTICING THE PROFESSION FRAUDULENTLY

The Respondent is charged with practicing the profession fraudulently within the meaning of N.Y. Educ. Law § 6530(2) in that the Petitioner charges:

1. The facts of paragraph A.
2. The facts of paragraph B.
3. The facts of paragraph C.
4. The facts of paragraph D.
5. The facts of paragraph F.
6. The facts of paragraph G.
7. The facts of paragraph H.
8. The facts of paragraph I.

NINTH THROUGH SIXTEENTH SPECIFICATIONS

CONDUCT WHICH EVIDENCES MORAL UNFITNESS

The Respondent is charged with conduct in the practice of medicine which evidences moral unfitness within the meaning of N.Y. Educ. Law § 6530(20) in that the Petitioner charges:

9. The facts of paragraph A.
10. The facts of paragraph B.
11. The facts of paragraph C.
12. The facts of paragraph D.
13. The facts of paragraph F.
14. The facts of paragraph G.
15. The facts of paragraph H.
16. The facts of paragraph I.


SEVENTEENTH SPECIFICATION

VIOLATING PHL §2805(k)

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(14) by violating Public Health Law §2805(k) as alleged in the facts of the following:

17. The facts of paragraph E.

DATED: *February 4*, 2002
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

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

IN THE MATTER
OF
BRIAN A. GOLDWEBER, M.D.

CONSENT
ORDER

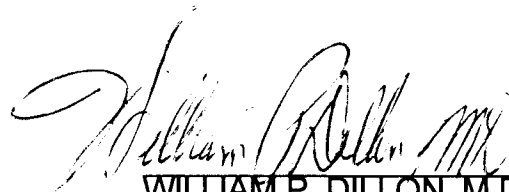
Upon the application of Brian A. Goldweber, M.D. (Respondent) in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

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: 3/19/02



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