



Board for Professional Medical Conduct

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

C. Maynard Guest, M.D.
Executive Secretary

September 6, 1995

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Joseph Martin Sherman, M.D.
Boulder Valley Women's Health Center
2855 Valmont
Boulder, Colorado 80301

RE: License No. 184687

Effective Date: 09/13/95

Dear Dr. Sherman:

Enclosed please find Order #BPMC 95-210 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

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
Empire State Plaza
Tower Building-Room 438
Albany, New York 12237-0756

Sincerely,

C. Maynard Guest, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Gary B. Blum, Esq.
Long & Jaudon
The Bailey Mansion
1600 Ogden Street
Denver, Colorado 80218-1414

Kimberly O'Brien, Esq.

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

-----x

IN THE MATTER :
OF : ORDER
JOSEPH MARTIN SHERMAN, M.D. : BPMC #95-210

-----x

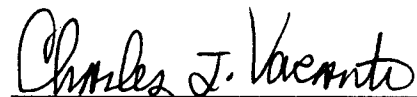
Upon the application of JOSEPH MARTIN SHERMAN, M.D.,
(Respondent) for Consent Order, which application is made a part
hereof, it is

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

ORDERED, that this order shall take effect as of the date of
the personal service of this order upon Respondent, upon receipt
by Respondent of this order via certified mail, or seven days
after mailing of this order by certified mail, whichever is
earliest.

SO ORDERED,

DATED: 29 August 1995



Charles J. Vacanti, M.D.
Chairperson
State Board for Professional
Medical Conduct

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

-----X
IN THE MATTER : APPLICATION
OF : FOR
JOSEPH MARTIN SHERMAN, M.D. : CONSENT
: ORDER
-----X

STATE OF COLORADO)
COUNTY OF BOULDER) SS.:

JOSEPH MARTIN SHERMAN, M.D., being duly sworn, deposes and says:

That on or about January 4, 1991, I was licensed to practice as a physician in the State of New York, having been issued License No. 184687 by the New York State Education Department.

I am currently registered with the New York State Education Department to practice as a physician in the State of New York.

I understand that the New York State Board for Professional Medical Conduct has charged me with two(2) Specifications of professional misconduct.

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

I admit guilt to the second specification in full satisfaction of the charges against me.

I hereby agree that my license shall be limited to prevent me from practicing obstetrics or applying for or obtaining

privileges at any hospital to practice obstetrics, and that I will comply with the terms of probation and monitoring set out in Exhibit "B".

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.

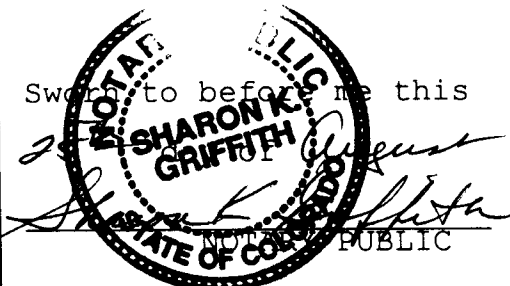
I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.

Joseph Martin Sherman M.D.

JOSEPH MARTIN SHERMAN, M.D.
RESPONDENT

Sworn to before me this

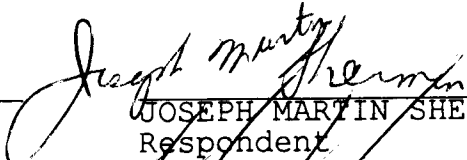


, 1995.

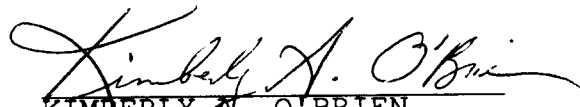
STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
IN THE MATTER : APPLICATION
OF : FOR
JOSEPH MARTIN SHERMAN, M.D. : CONSENT
: ORDER
-----X

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

DATE: August 25, 1995 
JOSEPH MARTIN SHERMAN, M.D.
Respondent

DATE: 8/25/95
GARY B. BLUM, ESQ.
Attorney for Respondent

DATE: August 29, 1995 
KIMBERLY A. O'BRIEN
SENIOR ATTORNEY
Bureau of Professional
Medical Conduct

DATE: August 29, 1995 
KATHLEEN M. TANNER
DIRECTOR
Office of Professional Medical
Conduct

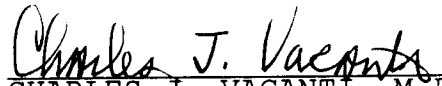
DATE: 29 August 1995 
CHARLES J. VACANTI, M.D.
CHAIRPERSON
State Board for Professional
Medical Conduct

EXHIBIT A

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

-----X

IN THE MATTER : STATEMENT

OF : OF

JOSEPH MARTIN SHERMAN, M.D. : CHARGES

-----X

JOSEPH MARTIN SHERMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 4, 1991, by the issuance of license number 184687 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A 1. The State Medical Board of Colorado, [hereinafter "the Colorado Board"], by Final Order on or about April 13, 1994, charged and Respondent admitted that, in his capacity as a licensed physician, he was subject to the Colorado Statutes, and the jurisdiction of the Colorado Board, and admitted that the facts set forth in the report of investigation, if proven, would constitute violations of C.R.S. Section 12-36-117(1) (p).
2. More specifically, the Stipulated Facts in the Order, in part, include that the report of investigation disclosed two or more acts of substandard care.

3. The Colorado Board and Respondent agreed to a stipulated disposition, in which Respondent consented not to practice obstetrics or apply for or obtain hospital privileges at any hospital to practice obstetrics, to continue to practice in the state of Colorado.

4. The conduct underlying the Colorado Board's finding of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(3) (McKinney Supp. 1994) [practicing profession with negligence on one or more occasion] and/or N.Y.Educ.Law §6530(5) (McKinney Supp. 1994) [practicing profession with incompetence on one or more occasion]

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PROFESSIONAL MISCONDUCT

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1994) by reason of his having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts in Paragraphs A.1, A.2, A.3 and/or A.4.

SECOND SPECIFICATION

DISCIPLINE IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1994) by reason of his having been ~~found guilty of improper professional practice or professional misconduct and~~ disciplined by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

Rock
9/29/95
07313 8/2/95
B 8/25/95 KA 8/28/95

1. The facts in Paragraphs A.1, A.2, A.3 and/or A.4.

DATED: *Aug 4*, 1995
Albany, New York

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

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias

The exact wording of the rules is found at 10 NYCRR Part 51 of Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or the findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.

51.5 Answer to Responsive Pleading. A party may serve a response to the allegations of the Department.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, documents or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure or a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent and Surrender Orders. At any time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation

and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

Complaints relating to Public Health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

51.12 Hearing Officer's Report. In matters governed by Public Health Law Sections 230, 230-a and 230-b, the final report should be submitted not more than 52 days after completion of the hearing if service is effectuated by mail and not more than 58 days of service if effectuated personally. In all other matters, the Hearing Officer, within 60 days of the completion of the hearing, should submit a report.

51.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order or, within 15 days of a date a report of the hearing committee and proposed recommendation for hearings conducted pursuant to Public Health Law Section 230 is sent to the parties, any party may submit exceptions to said report and proposed order to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed.

51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

51.16 Establishment, Construction, Rate Hearings. Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public Health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York
February 7, 1992



PETER J. MILLOCK
General Counsel

EXHIBIT "B"

TERMS OF PROBATION

AND MONITORING

1. JOSEPH MARTIN SHERMAN, M.D., (hereafter, "Respondent") during the one (1) year period of probation, 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 imposed by law and by his profession.
2. Excluding any portions suspended as provided in paragraph "10", the period of probation described hereunder will go into effect concurrent with the period of monitoring described in Paragraphs "6" through "8", below.
3. Respondent, during the period of probation, shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, New York State Department of Health, Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237 of any medical employment and practice, of Respondent's residence and telephone number, or of any changes in Respondent's medical employment, practice, or residence, or telephone number within or without the State of New York.
4. Respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that Respondent has paid all registration fees due and owing to the NYSED. Respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees. The proof from DPLS regarding registration fees is to be submitted by Respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than 90 days after the period of probation begins.
5. Respondent shall submit written proof to the NYSDOH, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that (1) Respondent is currently registered with the NYSED, unless Respondent submits written proof that Respondent has advised DPLS, NYSED, that Respondent is not engaging in the practice of Respondent's profession in the State of New York and does not desire to register; and that (2) Respondent has paid any fines which may have previously been imposed upon Respondent by the Board or by the Board of Regents. The proof of the above is to be submitted no later than 60 days after the period of probation begins.

6. Respondent presently practices medicine in Colorado. Should Respondent decide to commence the practice of medicine in New York in which he will provide direct patient care, he will notify the Director of OPMC in writing of this fact at least thirty days before he is to begin such practice in New York. The notice shall identify the office address from which Respondent will practice medicine in New York.
7. Before Respondent begins the practice of medicine in New York in which he provides direct patient care, the Director of OPMC (or designee) must approve a monitor of Respondent's medical practice in New York.
8. For a period of twelve (12) months after Respondent commences the practice of medicine in New York in which he provides direct patient care, beginning with the first day of his practice in New York, Respondent's medical practice shall be monitored by a currently registered, New York licensed physician, who shall be board certified in obstetrics/gynecology .
 - a. The monitoring physician may be selected by the Respondent, subject, however, to the approval of the Director of OPMC. Such monitoring physician shall acknowledge their willingness to comply with these terms of monitoring by executing an acknowledgement provided by the Office of Professional Medical Conduct.
 - b. On a quarterly basis, i.e., every three months, such monitoring physician shall assess, through reviews of the records of Respondent's gynecological admissions, through conversations with Respondent, and through any other means the monitor believes is appropriate, whether Respondent is practicing medicine in accordance with accepted standards of medical practice. The records noted above shall be randomly selected by the monitor for review. The monitor shall review no less than twenty (20) of such records per quarter. If Respondent has less than 20 such admissions per quarter, the monitor shall review the records of randomly selected patients, in an amount so that at least 20 total records (surgical admissions and others) are reviewed per quarter.
 - c. The monitoring physician shall submit to OPMC quarterly reports regarding the quality of Respondent's medical practice, and certifying Respondent's compliance with, or detailing his failure to comply with, accepted standards of medical practice. A total of four (4) quarterly reports will be required, submitted once every three (3) months of the twelve (12) month period of monitoring.
 - d. Respondent agrees that the costs of complying with all such terms of monitoring will be his responsibility.

9. During the twelve (12) months that Respondent is being monitored under these terms of probation, Respondent shall be required to maintain medical malpractice insurance coverage with limits of no less than two million dollars per occurrence and six million dollars per policy year, as required by Public Health Law section 230(18)(b) (McKinney Supp. 1995).
10. The requirement of monitoring detailed in paragraph "8", above, shall be suspended until such time, if any, Respondent commences the practice of medicine in New York State. Respondent will comply with all other requirements of these terms beginning with the effective date of the Order issued pursuant to this Application, and continuing for one (1) year.
11. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the order of the Board.
12. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. 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).
13. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against Respondent as may be authorized pursuant to the Public Health Law.