



New York State Board for Professional Medical Conduct

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

Dennis P. Whalen
Executive Deputy Commissioner of Health
Anne F. Saile, Director
Office of Professional Medical Conduct
William J. Comiskey, Chief Counsel
Bureau 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 23, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jeffrey A. Gelber, M.D.
161 Northington Drive
East Amherst, NY 14051

RE: License No. 129283

Dear Dr. Gelber:

Enclosed please find Order #BPMC 98-311 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **December 23, 1998.**

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 1315
Empire State Plaza
Albany, New York 12237

Sincerely,



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

Enclosure

cc: Joseph V. McCarthy, Esq.
Roach, Brown, McCarthy & Gruber, P.C.
1620 Liberty Building
420 Main Street
Buffalo, NY 14202-3616

Kevin P. Donovan, Esq.

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

IN THE MATTER
OF
JEFFREY A. GELBER, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-311

JEFFREY A. GELBER, M.D., (Respondent) says:

That on or about November 12, 1976, I was licensed to practice as a physician in the State of New York, having been issued License No. 129283 by the New York State Education Department.

My current address is 161 Northington Drive, East Amherst, New York 14051, 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 Fifteen 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 First Specification, in full satisfaction of the charges against me. I hereby agree to the following penalty: I will receive a censure and reprimand, I will pay a fine of \$5,000.00 within 60 days of the effective date of this order, and I will be on probation for a period of two years during which time I will fully comply with the Terms of Probation appended hereto as 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 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 until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied; 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.

I hereby stipulate that any failure by me to comply with such condition 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.

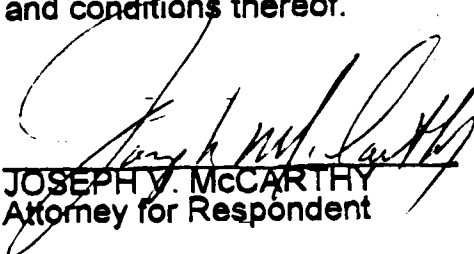
AFFIRMED:

DATED 12/11/98



JEFFREY A. GELBER, 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: 12/10/98


JOSEPH Y. MCCARTHY
Attorney for Respondent

DATE: 12/16/98


KEVIN P. DONOVAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 12/17/98


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
JEFFREY A. GELBER, M.D.

CONSENT
ORDER

Upon the proposed agreement of JEFFREY A. GELBER, 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: 12/21/98



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

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JEFFREY GELBER, M.D. : CHARGES
-----X

JEFFREY GELBER, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 12, 1976, by the issuance of license number 129283 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. The Respondent treated Patient A (patients are identified in Appendix A) from in or around November 1979, through at least May 1992. Respondent's care of Patient A did not meet acceptable standards of care in that:

1. The Respondent failed to obtain and/or document adequate histories and/or physical examinations of Patient A, including but not limited to assessment of the patient's chest, arm and breast.
2. The Respondent failed to perform or refer Patient A for adequate gynecologic evaluation, including breast assessments and Pap smears.
3. The Respondent improperly recorded the patient's vital signs on multiple visits.
4. The Respondent failed to maintain an adequate or legible medical record for Patient A.

B. The Respondent treated Patient B from in or around March 1987 through at least May 1998. Respondent's care of Patient B did not meet acceptable standards of care in that:

EXHIBIT A

1. The Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient B.
2. The Respondent improperly recorded the patient's vital signs on multiple visits.
3. The Respondent failed to maintain an adequate or legible medical record for Patient B.

C. The Respondent treated Patient C from in or around June 1991 through at least April 1998. Respondent's care of Patient C did not meet acceptable standards of care in that:-

1. The Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient C.
2. The Respondent improperly recorded the patient's vital signs on multiple visits.
3. The Respondent failed to maintain an adequate or legible medical record for Patient C.

D. The Respondent treated Patient D from in or around January 1991 through at least February 1998. Respondent's care of Patient D did not meet acceptable standards of care in that:

1. The Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient D.
2. The Respondent improperly recorded the patient's vital signs on multiple visits.
3. The Respondent failed to maintain an adequate or legible medical record for Patient D.

E. The Respondent treated Patient E from in or around March 1991 through at least May 1998. Respondent's care of Patient E did not meet acceptable standards of care in that:

1. The Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient E.
2. The Respondent improperly recorded the patient's vital signs on multiple visits.

3. The Respondent failed to maintain an adequate or legible medical record for Patient E.

F. The Respondent Patient F from in or around October 1994 through October 1996. Respondent's care of Patient F fell below acceptable standards of care in that:

1. The Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient F.
2. The Respondent improperly recorded the patient's vital signs on multiple visits.
3. The Respondent failed to maintain an adequate or legible medical record for Patient F.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession with negligence on more than one occasion within the meaning of N.Y. Educ. Law § 6530(3) in that Petitioner charges that the Respondent committed two or more of the following:

1. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, D and D.3, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, F and F.3.

SECOND SPECIFICATION

PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession with incompetence on more than one occasion within the meaning of N.Y. Educ. Law § 6530(5) in that the Petitioner charges that the Respondent committed two or more of the following:

2. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, C and C.3, D and

D.1, D and D.2, D and D.3, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, F and F.3.

THIRD THROUGH EIGHTH SPECIFICATIONS

PRACTICING WITH GROSS NEGLIGENCE

The Respondent is charged with practicing the profession with gross negligence on a particular occasion within the meaning of N.Y. Educ. Law § 6530(4) in that the Petitioner charges:

3. The facts in paragraphs A and A.1, A and A.2, A and A.3, and/or A and A.4.
4. The facts in paragraphs B and B.1, B and B.2, and/or B and B.3.
5. The facts in paragraphs C and C.1, C and C.2, and/or C and C.3.
6. The facts in paragraphs D and D.1, D and D.2, and/or D and D.3.
7. The facts in paragraphs E and E.1, E and E.2, and/or E and E.3.
8. The facts in paragraphs F and F.1, F and F.2, and/or F and F.3.

NINTH SPECIFICATION

PRACTICING WITH GROSS INCOMPETENCE

Respondent is charged with practicing the profession with gross incompetence within the meaning of N.Y. Educ. Law § 6530(6) in that Petitioner charges:

9. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, D and D.3, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, F and F.3.

TENTH THROUGH FIFTEENTH SPECIFICATIONS

FAILING TO MAINTAIN PATIENT RECORDS

The Respondent is charged with failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient within the meaning of N.Y. Educ. Law § 6530(32) in that the Petitioner charges:

10. The facts in paragraphs A and A.1, A and A.3, and/or A and A.4.

11. The facts in paragraphs B and B.1, B and B.2, and/or B and B.3.
12. The facts in paragraphs C and C.1, C and C.2, and/or C and C.3.
13. The facts in paragraphs D and D.1, D and D.2, and/or D and D.3.
14. The facts in paragraphs E and E.1, E and E.2, and/or E and E.3.
15. The facts in paragraphs F and F.1, F and F.2, and/or F and F.3.

DATED: *December 16*, 1998
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 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 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. All histories, physicals, and progress notes, whether for office or hospital patients, shall be type-written.
7. 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 of no less than 50 records per month 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.