



New York State Board for Professional Medical Conduct

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

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

Patrick F. Carone, M.D., M.P.H.

Chair

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

Executive Secretary

October 15, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Richard O'Brien, DO
3593 Grant Road
Clinton, New York 13323

RE: License No.: First Year Resident

Dear Dr. O'Brien:

Enclosed please find Order #BPMC 98-242 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **October 15, 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

Sincerely,

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

Executive Secretary

Board for Professional Medical Conduct

Enclosure

cc: Kenneth P. Ray, Esq.
213 Rutger Street
Utica, New York 13501

Wilfred T. Friedman, Esq.
36 West 44th Street
New York, New York 10036

Valerie B. Donovan, Esq.

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

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IN THE MATTER	:	CONSENT
OF	:	AGREEMENT
RICHARD O'BRIEN, D.O.	:	AND ORDER
	:	BPMC # 98-242

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RICHARD O'BRIEN, D.O., states:

That I completed a first year residency, Post Graduate Year-1 (PGY-1) in the Bassett-St. Elizabeth Family Medicine Residency Program in Utica, New York.

My current address is 3593 Grant Road, Clinton, New York, 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 as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit A.

I hereby agree not to contest the First, Sixth, and Seventh Specifications in full satisfaction of the charges against me as set forth in Exhibit A and hereby agree to the following penalty:

A Censure and Reprimand; and

A three year term of probation, during which I must fully comply with the terms of probation set out in Exhibit B, attached.

I further agree that the Consent Order for which I hereby

apply shall impose a condition that, except during periods of actual suspension, I maintain current registration of my 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. 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 that 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.

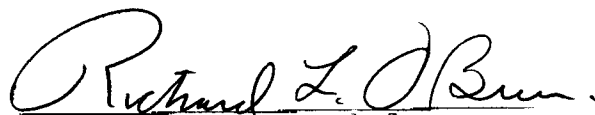
I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict 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 as of the date of the personal service of the order upon me, upon mailing of this order to me at the address set forth in this agreement or to my attorney by certified mail or upon transmission via facsimile to me or my attorney, whichever is earliest.

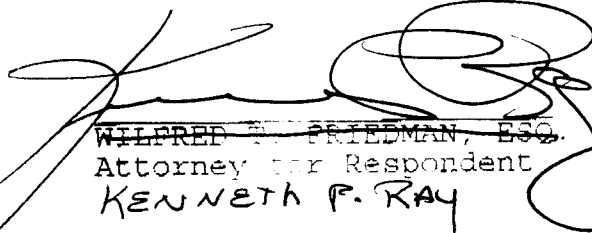
I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance of the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing 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:

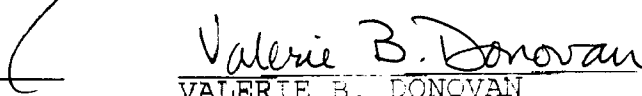

RICHARD O'BRIEN, D.O.
RESPONDENT

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

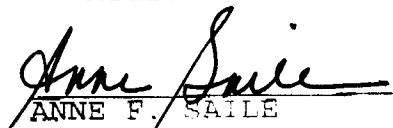
DATE: 10/2/98


WILFRED F. FRIEDMAN, ESQ.
Attorney for Respondent
KENNETH F. RAY

DATE: 10/5/98


VALERIE B. DONOVAN
ASSISTANT COUNSEL
Bureau of Professional
Medical Conduct

DATE: October 6, 1998


ANNE F. SAILE
DIRECTOR
Office of Professional
Medical Conduct

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

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IN THE MATTER :
OF : CONSENT
RICHARD O'BRIEN, D.O. : ORDER
:
-----X

Upon the proposed agreement of RICHARD O'BRIEN, D.O.
(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 as of the date
of the personal service of this order upon Respondent, upon
mailing of this 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:

October 12, 1998



PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct

Exhibit A

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

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IN THE MATTER : STATEMENT
OF : OF
RICHARD O'BRIEN, D.O. : CHARGES

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RICHARD O'BRIEN, D.O., the Respondent, is a first year resident, Post Graduate Year-1, in the Bassett - St. Elizabeth Family Medicine Residency Program, Utica, New York. Pursuant to New York Education Law Section 6526(1), Respondent may practice without a license within the state, provided such practice is limited to a hospital and is under the supervision of a licensed physician. Pursuant to N.Y. Public Health Law Section 230(7), the term licensee includes a medical resident, and as such, the state board for professional medical conduct has jurisdiction over Respondent in disciplinary proceedings.

FACTUAL ALLEGATIONS

A. Respondent, on or about January 30, 1998, treated Patient A [Patient is identified in Appendix] in the Emergency Department of St. Elizabeth's Medical Center, 2209 Genesee Street, Utica, New York 13501. Respondent, from on about January 30, 1998 through on or about March 21, 1998, engaged in conduct which did not meet accepted standards of care, in that:

1. Respondent, after treating Patient A in the Emergency Department of St. Elizabeth's Center, repeatedly telephoned Patient A at her home.
2. Respondent fraudulently and/or inappropriately spoke

with Patient A on the telephone after calling her home, and/or arranged to meet with Patient A at a Friendly's Restaurant in Utica stating that it was for treatment.

3. Respondent telephoned Patient A and told her that because she did not meet him at Friendly's Restaurant, she was a bad girl and he was going to have to spank her, or words to that effect.
4. Respondent, on or about March 19, 1998, drove to Patient A's house.
5. Respondent, on or about March 19, 1998, fraudulently and/or inappropriately caused Patient A to go with him to what Respondent stated would be an office for treatment.
6. On or about March 19, 1998, Respondent gave Patient A money to pay for gasoline for Patient A's automobile.
7. Respondent, on or about March 19, 1998, told Patient A that he knew someone at the Colonial Motel in North Utica who owed him a favor, and that Respondent could get a room without charge where he could treat Patient A, a statement which Respondent knew not to be true.
8. Respondent, on or about March 19, 1998, encouraged Patient A to enter the Colonial Motel, 966 Route 5, Schuyler, New York, under the pretext that he would provide medical treatment there.
9. Respondent failed to record in Patient A's medical record Respondent's contacts with and attempted medical treatment of Patient A.
10. Respondent, authorized to practice in a residency program under supervision, contacted Patient A and/or attempted to provide medical care to Patient A outside the program and/or without the supervision of a licensed physician.

SPECIFICATIONS

FIRST SPECIFICATION

PERFORMING PROFESSIONAL SERVICES

WITHOUT ADEQUATE SUPERVISION

Respondent is charged with professional misconduct under

N.Y. Educ. Law § 6530 (24) by reason of his performing without adequate supervision professional services which Respondent is authorized to perform only under the supervision of a licensed professional, in that Petitioner charges that Respondent committed the following:

1. The facts in paragraphs A and A. 1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8 and/or A and A.10.

SECOND SPECIFICATION

PRACTICING FRAUDULENTLY

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530 (2) by reason of his practicing the profession fraudulently, in that Petitioner charges that Respondent committed the following:

2. The facts in paragraphs A and A.2, A and A.5, A and A.7 and/or A and A.8.

THIRD SPECIFICATION

NEGLECT ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530(3) by reason of his practicing the profession of medicine with negligence on more than one occasion, in that Petitioner charges that Respondent committed two or more of the following:

3. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, A and A.9 and/or A and A.10.

FOURTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530(5) by reason of his practicing the profession of medicine with incompetence on more than one occasion, in that petitioner charges that Respondent committed two or more of the following:

4. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, A and A.9 and/or A and A.10.

FIFTH SPECIFICATION

MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(20) by reason of his conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

5. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7 and/or A and A.8.

SIXTH SPECIFICATION

WILFUL HARASSMENT OF A PATIENT

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530(31) by reason of his wilfully harassing or intimidating a patient either physically or verbally, in that

Petitioner charges:

6. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7 and/or A and A.8.

SEVENTH SPECIFICATION

INADEQUATE RECORDS

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

7. The facts in paragraphs A and A.9.

DATED: *October 6*, 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 (NYSDOH), addressed to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Hedley Park Place, 4th Floor, 433 River Street, Troy, New York 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. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
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, with the exception of the provisions pertaining to obtaining therapy, which becomes effective on the effective date of the Consent Order. 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 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.
7. Respondent shall practice medicine only when supervised in his medical practice, including any and all residency programs. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. The practice supervisor shall be proposed by Respondent and subject to the written approval of the Director. The practice supervisor shall not be a family member or personal friend, or be in a professional relationship which could pose a conflict with supervision responsibilities.
8. Respondent shall ensure that the practice supervisor is familiar with the Order and terms of probation, and willing to report to OPMC. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
9. Respondent shall authorize the practice supervisor to have access to his patient records and to submit quarterly written reports to the Director of OPMC, regarding Respondent's practice. These narrative reports shall address all aspects of Respondent's clinical practice including but not limited to the evaluation and treatment of patients, general demeanor, time and attendance, the supervisor's assessment of patient records selected for review and other such on-duty conduct as the supervisor deems appropriate to report.
10. Respondent shall be counseled or undergo therapy with a therapist, proposed by Respondent and approved in writing by the Director of OPMC, starting immediately upon the effective date of the consent order. The therapy shall be continued for at least one year or longer as the therapist deems necessary.
11. Respondent shall cause the therapist to submit a proposed

treatment plan 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 advice or displays any symptoms of a suspected or actual relapse.

12. Respondent shall comply with any request from OPMC to obtain an independent psychiatric evaluation by a health care professional proposed by Respondent and approved, in writing, by the Director of OPMC.
13. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he 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.
14. Any monitoring or supervision requirements imposed pursuant to this Order create a condition precedent to the further practice of medicine by Respondent. To wit: OPMC approval of a monitor or supervisor is a condition precedent to the Respondent's further practice of medicine and any practice of medicine without a pre-approved monitor or supervisor is unauthorized within the meaning of N.Y. Educ. Law section 6512, and may lead to criminal prosecution.
15. 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.