



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.
*Commissioner
NYS Department of Health*

Dennis P. Whalen
*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office 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

April 24, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gary J. Rothfeld, D.O.

REDACTED

RE: License No. 152173

Dear Dr. Rothfeld:

Enclosed please find Order #BPMC 02-122 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect April 24, 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,

REDACTED

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

Enclosure

cc: Any T. Kulb, Esq.
Messrs Jacobson and Goldberg
585 Stewart Avenue
Garden City, NJ 11530

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

IN THE MATTER
OF
GARY J. ROTHFELD, D.O.

CONSENT
AGREEMENT
AND
ORDER

BPMC No. 02-122

GARY J. ROTHFELD, D.O., representing all statements herein made to be true, deposes and says:

That on or about October 29, 1982, I was licensed to practice as a physician in the State of New York, having been issued License No. 152173 by the New York State Education Department.

My current address is **REDACTED** 10022, 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 (15) 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 Fifteenth Specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

- Pursuant to §230-a(2) of the Public Health law, my license to practice medicine in the State of New York shall be suspended for a period of three years, with said suspension to be entirely stayed.

- Pursuant to §230-a(9) of the Public Health law, I shall be placed on probation for a period of five years, subject to the terms set forth in Exhibit "B".
- I shall be subjected to a fine in the amount of \$10,000, pursuant to §230-a(7) and (9) of the Public Health law, to be paid at the rate of \$2000 per year during the term of my probation in accordance with the terms of Paragraph 9 in Exhibit "B".

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

I shall cease and desist the prescribing and sale of all private label products unless:

- The product confers a true benefit on the patient and no misrepresentations are made about the product.
- The advantages and disadvantages of the product including risks, if any, as well as any comparisons with applicable prescription drugs are fully discussed with the patient prior to purchase and such discussion is acknowledged by the patient in writing at the time of purchase. Such acknowledgment shall be maintained as part of my record for each patient.
- No pressure tactics are used in the sale thereof.

- The product is sold at a price that is fair and competitive with prices for similar products charged by other dermatologists.
- Should the use of the product have an adverse effect, treatment will be rendered free of charge until such effect is cured.
- All sales shall be made only by me the physician, and not by any support staff.

Respondent shall maintain active 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 will continue while the licensee possesses his/her license; 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 will continue while the licensee possesses his/her license.

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).

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.

REDACTED

GARY J. ROTHFELD, D.O.
RESPONDENT

DATED 4/8/02

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

DATE: 4/9/02

REDACTED

~~AMY KULB, ESQ.~~
Attorney for Respondent

DATE: 4/16/02

REDACTED

~~DAVID W. SMITH~~
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 4/22/02

REDACTED

~~DENNIS J. GRAZIANO~~
Director
Office of Professional
Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
GARY J. ROTHFELD, D.O.

STATEMENT
OF
CHARGES

GARY J. ROTHFELD, D.O., the Respondent, was authorized to practice medicine in New York State on or about October 29, 1982, by the issuance of license number 152173 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about May 12, 1998, Respondent treated Patient A at his office at 30 East 60th Street, New York City ("Office") for atopic dermatitis.
 - 1. Respondent deliberately and with intent to deceive falsely stated that Patient A's skin problem needed to be treated immediately, whereupon he sold Patient A \$657.00 worth of medication.
 - 2. Respondent deliberately and with intent to deceive falsely told Patient A that such medications were necessary.

B. On or about May 28, 1998, Respondent treated Patient B at his Office for an itching condition.

1. Respondent inappropriately attempted to sell his own medications to Patient B by deliberately and with intent to deceive representing to Patient B that such medications were the only ones that would work. These representations were false and Respondent knew them to be false at the time he made them.
2. Respondent removed lesions from the back of Patient B without the knowledge or consent of Patient B.
3. Respondent failed to note the size, number, or location of such lesions.

C. On or about April 2, 1998, Respondent treated Patient C for a rash at his Office.

1. Respondent inappropriately tried to sell Patient C approximately \$800.00 worth of medications by refusing to write a prescription for Patient C unless he purchased such medication.
 2. Respondent represented to Patient C deliberately and with intent to deceive, that such medications were "exclusive and unique" which representations were false and Respondent knew they were false at the time he made them.
- D. Between in or about January, 1983 and June, 1983, Respondent was a resident at Montefiore Hospital.
1. On his residency application he deliberately and with intent to deceive, falsely stated that he had a Doctor of Medicine Degree.
 2. On the hospital badge he deliberately and with intent to deceive falsely stated that he was an "M.D."
- E. On his Curriculum Vitae, Respondent deliberately and with intent to deceive falsely stated that he had a dermatological residency at Staten Island Hospital.

SPECIFICATION OF CHARGES
FIRST THROUGH THIRD SPECIFICATIONS
UNDUE INFLUENCE

Respondent is charged with professional misconduct as defined in N.Y. Educ. Law Section 6530(17)(McKinney Supp.) by exercising undue influence on a patient as alleged in the facts of the following:

1. Paragraphs A and A1-2.
2. Paragraphs B and B1.
3. Paragraphs C and C1-2.

FOURTH SPECIFICATION
PERFORMING PROFESSIONAL SERVICES NOT AUTHORIZED

Respondent is charged with professional misconduct as defined in N.Y. Educ. Law Section 6530(26)(McKinney Supp.) by performing professional services not authorized by the patient as alleged in the facts of the following:

4. Paragraphs B and B2.

FIFTH THROUGH NINTH SPECIFICATIONS
PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(2)(McKinney Supp. 2001) by practicing the profession fraudulently as alleged in the facts of the following:

- 5. Paragraphs A and A1-2.
- 6. Paragraphs B and B1.
- 7. Paragraphs C and C1-2.
- 8. Paragraphs D and D1-2.
- 9. Paragraph E

TENTH THROUGH FOURTEENTH SPECIFICATIONS
CONDUCT EVIDENCING MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 2001) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

- 10. Paragraphs A and A1-2.
- 11. Paragraphs B and B1-2.
- 12. Paragraphs C and C1-2.
- 13. Paragraphs D and D1-2.
- 14. Paragraph E.

FIFTEENTH SPECIFICATION
FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 2001) 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:

- 15. Paragraphs B and B3.

DATED: November , 2001
 New York, New York

REDACTED

ROY NEMERSON
 Deputy Counsel
 Bureau of Professional
 Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, 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. 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].
5. 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.
6. 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.

7. 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.
8. Respondent may petition the Director of the Office of Professional Medical Conduct at any time after the end of the third year to reduce or terminate the remainder of the probation. The Director shall have the sole and absolute discretion to deny, modify or grant such request.
9. Such fine shall be paid at the rate of \$2000 per year during the term of this probation, the first payment to be made thirty (30) days after the date of the Order herein. Thereafter, each succeeding payment shall be made on or before each anniversary date of the Order. If, on the third anniversary of the Order, the Director in the exercise of his sole and absolute discretion, determines that Respondent has satisfactorily fulfilled the terms of his probation, the remaining two payments shall be forgiven.
10. 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.

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

IN THE MATTER
OF
GARY J. ROTHFELD, D.O.

CONSENT
ORDER


Upon the proposed agreement of GARY J. ROTHFELD, 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 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: 4/23/02


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