



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

February 13, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Steven Swersky, M.D.
461 Park Avenue South
New York, New York 10016

RE: License No. 146497

Dear Dr. Swersky:

Enclosed please find Order #BPMC 98-35 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **February 20, 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: Barbara Ryan, Esq.
Aaronson, Rappaport, Feinstein & Deutsch, LLP
757 Third Avenue
New York, New York 10017

David W. Smith, Esq.

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

IN THE MATTER
OF
STEVEN SWERSKY, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-35

STATE OF NEW YORK)
COUNTY OF) ss.:

STEVEN SWERSKY, M.D., being duly sworn, deposes and says:

That on or about July 1, 1981, I was licensed to practice as a physician in the State of New York, having been issued License No. 146497 by the New York State Education Department.

My current address is 461 Park Avenue South, New York , New York 10016, 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 five (5) specifications of professional misconduct.

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

I agree not to contest the allegations, in full satisfaction of the charges against me.

I hereby agree to the following penalty:

- a. Three year suspension of my license, which suspension shall be entirely stayed.
- b. Probation in accordance with the "Terms of Probation" attached hereto as Exhibit "B".

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)(McKinney Supp 1997).

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 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.


STEVEN SWERSKY, M.D.
RESPONDENT

Sworn to before me this

30th day of December, 1997

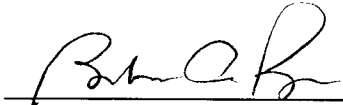


NOTARY PUBLIC

BARBARA A. RYAN
NOTARY PUBLIC, State of New York
No. 02RY4970663
Qualified in New York County
Commission Expires Sept. 19, 1998

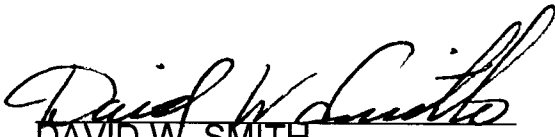
The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 12/30/97



Attorney for Respondent ESQ.

DATE: 1/30/98



DAVID W. SMITH
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: Feb. 3, 1998



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
STEVEN SWERSKY, M.D.

CONSENT
ORDER


Upon the proposed agreement of STEVEN SWERSKY, 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 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: 2/9/98


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

"Exhibit A"

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

IN THE MATTER
OF
STEVEN SWERSKY, M.D.

STATEMENT
OF
CHARGES

STEVEN SWERSKY, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1981, by the issuance of license number 146497 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. During in or about 1991 and 1992, Respondent provided Patient A (All patients are identified in the attached Appendix) with obstetrical and gynecological care at his office located at 461 Park Avenue South, New York, New York 10016 ("Office") and at Beth Israel Medical Center ("Center").
1. Respondent failed to perform an adequate physical examination or note such examination, if any.
 2. Respondent failed to obtain an adequate medical history or note such history, if any.
 3. In or about January and February; 1992, laboratory tests showed Patient A with low hemoglobin and hematocrit. Nevertheless, Respondent failed to evaluate, follow-up or treat such condition or note such evaluation, follow-up or treatment, if any.

4. Respondent diagnosed Patient A with diabetes but failed to adequately evaluate, follow-up or treat such condition or note such evaluation, follow-up or treatment, if any.
 5. Respondent failed to keep adequate medical records regarding his care of Patient A, including, but not limited to, failing to adequately note the delivery of the baby or the method by which the estimated fetal weight was obtained.
- B. During in or about 1990 and 1991, Respondent provided Patient with B obstetrical and gynecological care at his Office.
1. Respondent failed to perform an adequate physical examination or note such examination, if any.
 2. Respondent failed to obtain an adequate medical history or note such history, if any.
 3. Respondent failed to provide adequate pre-natal care.
 4. Respondent inappropriately assessed the fetal presentation.
 5. Respondent inappropriately induced labor.
 6. Respondent inappropriately performed an external version.

7. Respondent failed to obtain fetal heart tracings or note such tracings, if any.
 8. Respondent failed to describe adequately note the delivery of the baby and the baby's condition.
- C. During in or about 1990, Respondent provided Patient C with obstetrical and gynecological care at his Office and at the Center.
1. Patient C suffered fetal distress during labor but Respondent failed to evaluate, follow-up or treat such condition or note such evaluation, follow-up or treatment, if any.
 2. Respondent failed to adequately note the delivery of Patient C's baby and the baby's condition.
- D. During in or about 1992, Respondent provided Patient D with obstetrical and gynecological care at his Office and at the Center.
1. Respondent failed to perform an adequate physical examination or note such examination, if any.
 2. Respondent failed to obtain an adequate medical history or to note such history, if any.
 3. Respondent failed to timely diagnose uterine, cervical and bladder lacerations.

4. Respondent failed to adequately note the indication for induction and to describe the delivery of Patient D's baby.
- E. During in or about 1989 and 1990, Respondent provided Patient E with obstetrical and gynecological care at his Office and at the Center.
1. Respondent failed to perform an adequate physical examination or note such examination, if any.
 2. Respondent failed to obtain an adequate medical history or to note such history, if any.
 3. Patient E had five previous Cesarean deliveries. Nevertheless Respondent failed to counsel Patient E as to the risk of vaginal delivery after Cesarean section or to note such counseling, if any.
 4. Respondent failed to test for gestational diabetes.
 5. During labor, Respondent inappropriately continued the administration of Pitocin.
 6. Respondent failed to appropriately monitor Patient E's intrauterine events.
 7. Patient E suffered significant fetal distress but Respondent failed to evaluate, follow-up or treat such condition or note such evaluation, follow-up or treatment, if any.

F. During in or about 1994 and 1995, Respondent provided Patient D with obstetrical and gynecological care at his Office and at the Center.

1. Respondent failed to perform an adequate physical examination or note such examination, if any.
2. Respondent failed to obtain an adequate medical history or to note such history, if any.
3. Respondent failed to test for gestational diabetes.
4. Laboratory data reflected a toxoplasmosis anti-body IGG with a level of 3IU-ML, which could be a signal of early infection, Nevertheless, Respondent failed to evaluate, follow-up or treat such condition or note such evaluation, follow-up or treatment, if any.
5. During labor, Respondent inappropriately continued the administration of Pitocin.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1998) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

1. Paragraphs A and A1-5; B and B1-8; C and C1-2; D and D1-4; E and E1-7; and/or F and F1-5.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1998) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

2. Paragraphs A and A1-5; B and B1-8; C and C1-2; D and D1-4; E and E1-7; and/or F and F1-5.

THIRD THROUGH FIFTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 1998) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of such patient as alleged in the facts of:

3. Paragraphs A and A1-5.
4. Paragraphs B and B1, 2, 7 and 8.
5. Paragraphs C and C1-2.
6. Paragraphs D and D1-2, 4.
7. Paragraphs E and E1-3, 7.
8. Paragraphs F and F1-2, 4.

DATED: January , 1998
New York, New York

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.
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. 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 shall enroll in and complete a continuing education program in the area of Management of the High Risk Obstetrical Patients to be equivalent to at least 50 credit hours of Continuing Medical Education per year, over and above the recommended minimum standards set by the American College of Obstetricians and Gynecology. Said continuing education program shall be subject to the prior written approval of the Director of OPMC. Written verification of the successful completion of this program shall be reported to OPMC on an annual basis.
9. Respondent shall manage the labor and delivery of obstetrical patients only when supervised in his medical practice. There shall be a practice supervisor on-site at all affiliated hospital locations. 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.
 - 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.
 - Respondent shall cause the practice supervisor to directly observe Respondent's medical practice. In addition, Respondent must consult with the practice supervisor prior to and during the ordering or administration of oxytocin, the therapeutic induction of labor and prior to all decisions regarding operative delivery.
 - 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 including verification of Respondent's compliance with the approved supervision plan. These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, detailed case description of any case found to not meet the established standard of care, the supervisor's assessment of patient records selected for review and Respondent's general demeanor, time and attendance, and other such on-duty conduct as the supervisor deems appropriate to report.
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.