



New York State Board for Professional Medical Conduct

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

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NYS Department of Health*

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*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

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Vice Chair

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

March 21, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Howard Martin Weinstein, M.D.
600 E. Genesee Street
Suite 323
Syracuse, New York 13202

RE: License No. 117014

Dear Dr. Weinstein:

Enclosed please find Order #BPMC 01-74 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect March 21, 2001.

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,

A handwritten signature in black ink, appearing to read "Ansel R. Marks".

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

Executive Secretary

Board for Professional Medical Conduct

Enclosure

cc: Catherine A. Gale, Esq.
Gale and Dancks, Esqs.
71-36 E. Genesee Street, P.O. Box 97
Fayetteville, New York 13066-0097

Joseph Cahill, Esq.

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

**IN THE MATTER
OF
HOWARD MARTIN WEINSTEIN, M.D.**

**CONSENT
ORDER**
BPMC No. 01-74

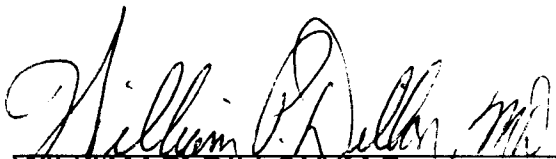
Upon the proposed agreement of HOWARD MARTIN WEINSTEIN, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

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: 3/16/01


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

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

**IN THE MATTER
OF
HOWARD MARTIN WEINSTEIN, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

STATE OF NEW YORK)
COUNTY OF) ss.:

HOWARD MARTIN WEINSTEIN, M.D., (Respondent) being duly sworn,
deposes and says:

That on or about August 6, 1977, I was licensed to practice as a physician in the State of New York, having been issued License No. 117014 by the New York State Education Department.

My current address is 600 East Genesee Street, Suite 323, Syracuse, New York 13202, 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 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 First Specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

1. \$15,000 fine.
2. Censure and Reprimand.
3. 3 Years probation in accordance with the terms set forth in Appendix B, hereto.

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

That 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.

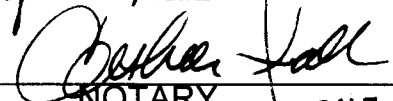
I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of 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.

DATED 2/26/01

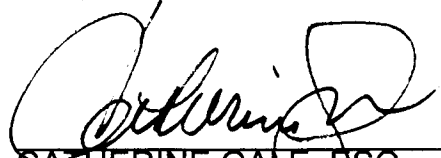

HOWARD MARTIN WEINSTEIN, M.D.
RESPONDENT

Sworn to before me on this 26th day of
February 2001


NOTARY
CATHERINE A. GALE
Notary Public, State of New York
Qualified in Westchester County, No. 4892627
My Commission Expires March 2, 2003

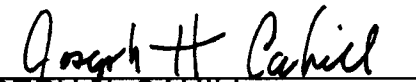
The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 2-26-01



CATHERINE GALE, ESQ.
Attorney for Respondent

DATE: 2-21-01



JOSEPH H. CAHILL
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 3/9/01



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
HOWARD MARTIN WEINSTEIN, M.D.

STATEMENT
OF
CHARGES

HOWARD MARTIN WEINSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 6, 1973, by the issuance of license number 117014 by the New York State Education Department. Respondent's registration address is located at Suite 323, 600 East Genesee Street, Syracuse, New York 13202.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care to Patient A (patients are identified in the Appendix), a then 50 year old female, from on or about October 17, 1989 through at least January 4, 1990. Respondent's care and treatment of Patient A failed to meet accepted standards of medical care in that:
1. Respondent examined Patient A on or about October 17, 1989. He discovered an enlarged left adnexal mass and ordered a sonogram test. Respondent failed to adequately document and/or maintain adequate records for Patient A related to his examination.
 2. Respondent failed to accurately record Patient A's preoperative condition in his office records prior to the admission of November 6, 1989.

3. Respondent failed to adequately and/or accurately communicate with Patient A regarding the procedures and surgery scheduled for November 7, 1989.
4. Respondent failed to accurately document Patient A's preoperative condition in his hospital operative notes for Patient A's admission which began on November 6, 1989.
5. Respondent failed to take adequate steps to evaluate Patient A prior to scheduling her for surgery on November 7, 1989.
6. Respondent performed a total abdominal hysterectomy and bilateral salpingo-oophorectomy that was not clearly indicated by the patient's condition, signs, symptoms and test results.
7. Respondent's decision to perform a total abdominal hysterectomy and bilateral salpingo-oophorectomy was made without first obtaining an intra-operative evaluation of the left ovarian cyst, such as a frozen section.
8. Respondent inaccurately reported that Patient A had undergone a GI series in 1989, when such series was actually done in 1987.

B. Respondent provided medical care and treatment to Patient B a then 31 year old female from on or about August of 1994 through at least May of 1995. Respondent's care and treatment of Patient B failed to meet accepted standards of medical care in that:

1. From on or about August of 1994 through April of 1995, Respondent failed to adequately document in his office records. Patient B's condition related to the total abdominal hysterectomy and bilateral salpingo-oophorectomy performed in April of 1995.
2. Respondent inaccurately stated in the history and physical

examination note related to the April, 1995 admission that the patient had “massive pelvic adhesions with complete occlusion of both fallopian tubes by small and large bowel”. In fact, the fallopian tubes were not occluded and the bowel was adhered to the outside of the fallopian tubes.

- C. Respondent provided medical care and treatment to Patient C, a then 47 year old female, from on or about August of 1994 through at least August of 1995. Respondent's care and treatment of Patient C failed to meet accepted standards of care in that:
1. Respondent failed from August of 1994 through September of 1994, to adequately document in his office records Patient C's condition and history related to the indication for a total abdominal hysterectomy and bilateral salpingo-oophorectomy performed in September 1994.
- D. Respondent provided medical care and treatment to Patient D. Respondent provided care from on or about March of 1984 through at least March of 1996. Respondent's care and treatment of Patient D failed to meet accepted standards of medical care in that:
1. Respondent failed to adequately document in his office records the patient's history and condition prior to the admission of January of 1996 for an exploratory laparotomy with myomectomy and fulguration of endometriosis;
 2. Respondent failed to take adequate steps to insure that all laparotomy pads were removed from the operative site prior to the completion of surgery on January of 1996.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law, Section 6530(3) by reason of his practice of the profession of medicine with negligence on more than one occasion, in that Petitioner charges two or more of 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 D and D.2.

SECOND THROUGH FIFTH SPECIFICATIONS

Respondent is charged with professional misconduct under New York Education Law, section 6530(32) by reason of his failure to maintain a record for each patient which accurately reflected the evaluation and treatment of the patient, in that Petitioner charges the following:

2. The facts in Paragraphs A and A.1, A and A.2, A and A.4 and/or A and A.8.
3. The facts in Paragraph B and B.1 and/or B and B.2.
4. The facts in Paragraph C and C.1.
5. The facts in Paragraph D and D.1.

DATED: *March 5*
~~February 2, 2001~~
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/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 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. A civil penalty of \$15,000 shall be paid within 180 days of the date of this agreement. 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.
7. Within thirty (30) days of the effective date of this Order, 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. For the first twelve months of the probation period, all of Respondent's proposed hysterectomy surgical cases shall be submitted to the practice monitor for approval prior to surgery (prospective monitoring). The procedures constituting hysterectomy surgery are set forth in Exhibit C hereto. Hysterectomy surgery shall not be performed before the practice monitor's approval is obtained in writing, at which time the practice monitor shall certify that he or she has received and reviewed all office and hospital records pertaining to the proposed surgery, the reports of all diagnostic studies and all films relating to the condition for which surgery is proposed. The OPMC shall be copied on all such approvals for surgery, and shall be notified in writing and in advance if surgery is not approved.
 - b. Emergency hysterectomies shall not be subject to prior approval. However, Respondent shall notify the practice monitor of such emergency surgery within a reasonable time and such surgery shall be subject to the review standards otherwise set forth in this paragraph, including the duty to notify OPMC within 24 hours of any deviation from the generally accepted standard of medical care related to such procedures. The excision of all, or any part of a patient's uterus, fallopian tubes and/or ovary, during an invasive diagnostic procedure shall be subject to the same requirements as set forth herein for emergency hysterectomies.
 - c. At the completion of the prospective monitoring and for the remainder of the probation term, the practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis, at least quarterly, and shall examine a selection (no less than 15 patients) of records maintained by Respondent, including patient records, surgical record and office records. The review will determine whether 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.
 - d. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - e. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - f. Respondent shall maintain medical malpractice insurance coverage with limits of no less than \$2 million per occurrence and \$6 million per policy year, in accordance with §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.

EXHIBIT "C"

The removal of all, or any part thereof, of any patient's uterus, fallopian tube and/or ovary.