



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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Vice Chair

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

November 10, 1999

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Kenneth C. Wu, M.D.
112 Main Street
Allegany, NY 14706

RE: License No.: 127255

Dear Dr. Wu:

Enclosed please find Order #BPMC 99-276 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **November 10, 1999.**

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 to 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: William S. Reynolds
c/o O'Shea, Reynolds & Cummings
Suite 500
Main Seneca Building
237 Main Street
Buffalo, NY 14203-2712

Michael A. Hiser, Esq.

NEW YORK STATE

DEPARTMENT OF HEALTH

STATE BOARD FOR
PROFESSIONAL
MEDICAL CONDUCT

IN THE MATTER
OF
KENNETH C. WU, M.D.

CONSENT
AGREEMENT

AND

ORDER
BPMC #99-276

STATE OF NEW YORK)
COUNTY OF CATTARAUGUS) ^{so.:}

KENNETH C. WU, M.D., (Respondent) being duly sworn, deposes and says:

That on or about June 18, 1976, I was licensed to practice as a physician in the State of New York, having been issued License No. 127255 by the New York State Education Department.

My current address is 112 Main Street, ^{Allegheny} ~~Olean~~, New York, 14706, 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 Four 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 Third Specification, insofar as it relates to Factual Allegations C.1, D.1, and E.1, in full satisfaction of the charges against me. I hereby agree to the following penalty: First, my license to practice medicine in New York State shall be suspended for a period of two years, with the suspension being stayed pending my compliance with the Terms of Probation attached hereto as Exhibit "B", and made a part hereof; and second, my license to practice medicine in New York State shall be permanently limited to preclude

me from practicing obstetrics.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions: my practice of medicine shall be monitored in accordance with the Terms of Probation.

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 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)(McKinney Supp 1999).

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.

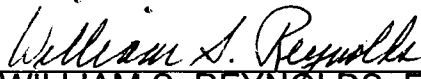
AFFIRMED:

DATED 10/6/99


Kenneth C. Wu
KENNETH C. WU, 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: 10/08/99


WILLIAM S. REYNOLDS, ESQ.
Attorney for Respondent

DATE: 10/12/99


MICHAEL A. HISER
ASSOCIATE COUNSEL
Bureau of Professional
Medical Conduct

DATE: October 14, 1999


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
KENNETH C. WU, M.D.

CONSENT
ORDER

Upon the proposed agreement of KENNETH C. WU, 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: 10/15/99.

Denise M. Bolan, RPA-C
DENISE M. BOLAN, R.P.A.
Vice Chair
State Board for 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. 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.

PRACTICE MONITOR

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. 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 is unauthorized within the meaning of N.Y. Educ. Law §6512, and may lead to criminal prosecution.

- 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 (no less than 20) of records 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.

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

-----X

IN THE MATTER : STATEMENT
OF : OF
KENNETH C. WU, M.D. : CHARGES

-----X

KENNETH C. WU, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 18, 1976 by the issuance of license number 127255 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period December 1, 1997 through November 30, 1999, with a registration office address of 112 Main Street, Olean, New York 14706.

FACTUAL ALLEGATIONS

A. Respondent, an obstetrician and gynecologist, treated Patient A (Patients are identified in the appendix attached hereto and made a part hereof) from on or about February 12, 1998 through August 18, 1998 at his office at 112 Main Street, Olean, New York 14706 (hereafter, "the office") and at Olean General Hospital, 515 Main Street, Olean, New York 14760 (hereafter, "Olean General"). Respondent provided pre-natal and other obstetric care to Patient A. Respondent's care and treatment of Patient A failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately evaluate the fetal heart rate monitoring strips of Patient A's fetus from 1:00 a.m. through 4:33 a.m. on August 18, 1998.
2. Respondent ordered the transport of Patient A to Children's Hospital of Buffalo at or about 3:30 a.m., which was inappropriate given the condition of the fetus as revealed in the fetal heart rate tracings.
3. Respondent failed to perform a caesarean section delivery of Patient A's fetus on August 18, 1998, despite medical indications.

B. Respondent treated Patient B at various times from on or about 1977 through July 1992 for gynecologic and obstetric care. Between November 1991 and July 1992, Respondent's care and treatment of Patient B failed to meet acceptable standards of medical care in that:

1. Respondent failed to obtain or order medically indicated diagnostic tests in the second trimester of Patient B's pregnancy, including a serum glucose or glucose tolerance test.

C. Respondent treated Patient C from on or about August 15, 1994 through May 1996 relating to gynecologic and obstetric care, including the delivery of the patient's stillborn twins at 8 1/2 months gestation in or about May 1995. Respondent's care and treatment of Patient C failed to meet acceptable standards of medical care in that:

1. Respondent failed to obtain adequate diagnostic tests during his pre-natal care of Patient C in 1994 through 1995, including obtaining an alpha-feto protein test.

D. Respondent treated Patient D at various times from on or about October 19, 1995 through June 1996 relating to gynecologic and obstetric care, including on or about April 29, 1996.

Respondent's care and treatment of Patient D failed to meet acceptable standards of medical care in that:

1. Respondent failed to obtain adequate diagnostic tests during his pre-natal care of Patient D in 1995 through 1996, including obtaining an alpha-feto protein test.

E. Respondent treated Patient E at various times from on or about April 21, 1994 through October 1998 relating to gynecologic and obstetric care, including through October 19, 1998.

Respondent's care and treatment of Patient E failed to meet acceptable standards of medical care in that:

1. Respondent failed to obtain adequate diagnostic tests during his pre-natal care of Patient E in 1998, including obtaining an alpha-feto protein test.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(4) by reason of his practicing the profession of medicine with gross negligence on a particular occasion, in that Petitioner charges the following:

1. The facts in paragraphs A and A.1, A and A.2, and/or A and A.3.

SECOND SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(6) by reason of his practicing the profession of medicine with gross incompetence on a particular occasion, in that Petitioner charges the following:

2. The facts in paragraphs A and A.1, A and A.2, and/or A and A.3.

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 set forth in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, C and C.1, D and D.1, and/or E and E.1.

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 set forth in paragraphs A and A.1, A and A.2, A and A.3, b and B.1, C and C.1, D and D.1, and/or E and E.1.

DATED: *October 12, 1999*

Albany, New York

Peter D. Van Buren
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct