



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

July 12, 2001

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Moshe Gaerman, M.D.
4802 Tenth Avenue
Brooklyn, New York 11219

RE: License No. 147654

Dear Dr. Gaerman:

Enclosed please find Order #BPMC 01-160 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect July 12, 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 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: Barbara A. Ryan, Esq.
Aaronson, Rappaport, Feinstein and Deutsch, LLP
757 Third Avenue
New York, NY 10017

Marcia Kaplan, Esq.

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

IN THE MATTER
OF
MOSHE GAERMAN, M.D.

CONSENT
ORDER

BPMC No. 01-160


Upon the proposed agreement of MOSHE GAERMAN, 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: 7/11/01


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
MOSHE GAERMAN, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

STATE OF NEW YORK)
COUNTY OF) ss.:

MOSHE GAERMAN, M.D., (Respondent) being duly sworn, deposes and says:

That on or about September 18, 1981, I was licensed to practice as a physician in the State of New York, having been issued License No. 147654 by the New York State Education Department.

My current residence address is 1512 President Street, Brooklyn, N.Y. 11213, my current office address is 4802 Tenth Avenue, Brooklyn, N.Y. 11219, and I will advise the Director of the Office of Professional Medical Conduct ("OPMC") of any change of my addresses.

I understand that the New York State Board for Professional Medical Conduct has charged me with three specifications of professional misconduct.

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

I do not contest the Second and Third Specifications, in full satisfaction of the charges against me. I hereby agree to the following penalty:

Pursuant to §230-a(3) of the Public Health Law, my
license to practice medicine in the state of New York
shall be limited to practice in an Article 28 facility and to

preclude practice in the area of anesthesiology, as further set forth in attached Exhibit B, including but not limited to: the administration of anesthesia to patients in any setting, including operating rooms, and patient monitoring and treatment in post anesthesia care units; and the performance of invasive procedures such as central line placements, pulmonary artery catheters, epidural catheters, or spinal blocks. This Order shall not preclude Respondent from doing pre-admission testing, including taking histories and performing physical examinations.

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

That, unless there are periods of actual suspension, 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 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 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.

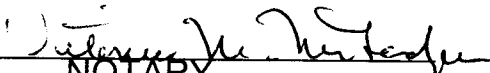
I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of 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 June 18, 2001


MOSHE GAERMAN, M.D.
RESPONDENT

Sworn to before me
on this 18 day of
June 2001


NOTARY


VICTORIA M. MCFADYEN
Notary Public, State of New York
No. 01MC4759374
Qualified in Kings County
Commission Expires Nov. 15, 2002

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

DATE: 6/27/01


BARBARA RYAN, ESQ.
Attorney for Respondent

DATE: 6/27/01


MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 7/9/01

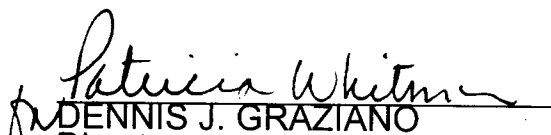

DENNIS J. GRAZIANO
Director
Office of Professional
Medical Conduct

EXHIBIT "A"

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

**IN THE MATTER
OF
MOSHE GAERMAN, M.D.**

**STATEMENT
OF
CHARGES**

MOSHE GAERMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 18, 1981, by the issuance of license number 147654 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. During the period between 1992 and 1998, and/or specifically on or about August 10, 1998 with respect to Patient A, Respondent failed to provide adequate monitoring of patients, and/or failed to adequately supervise residents in anesthesiology, in the operating room.

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) 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. Paragraph A.

SECOND SPECIFICATION

DELEGATING RESPONSIBILITIES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(25)(McKinney Supp. 2001) by delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified, by training or experience, to perform them, as alleged in the facts of:

2. Paragraph A.

THIRD SPECIFICATION

FAILING TO EXERCISE APPROPRIATE SUPERVISION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(33)(McKinney Supp. 2001) by failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee, as alleged in the facts of:

3. Paragraph A.

DATED: May , 2001
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms

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. Respondent acknowledges that if 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 this Order.
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. 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.
5. 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.
6. That my practice of medicine is limited to practice in an Article 28 facility and to preclude further practice in the area of anesthesiology including, but not limited to: the administration of anesthesia to patients in any setting, including operating rooms, and patient monitoring and treatment in post anesthesia care units; and the performance of invasive procedures such as central line placements, pulmonary artery catheters, epidural catheters, or spinal blocks. This Order shall not preclude me from doing pre-admission testing, including taking histories and performing physical examinations.
 - That I shall attest to compliance with the prescribed practice restriction(s) by signing and submitting to the Director of OPMC a Practice Restriction Declaration, as directed by the Director.

- That I shall cause the administrator(s) of all hospitals and other health care facilities or practices with I am affiliated to submit a letter to the Director of OPMC attesting to my compliance with the specified restriction(s) at each location.
 - That I continue in medical treatment as set forth in Exhibit "C."
 - I shall comply with any request from OPMC to obtain an independent physical evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
 - That I shall provide access for DOH personnel to my office(s) to verify my compliance with this Order. This access shall include, but not be limited to, on-site inspections, observation and interviews.
 - That I 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 me. I shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of my compliance with the terms of this Order. I shall meet with a person designated by the Director of OPMC, as directed, and I specifically agree to meet with a physician designated by the Director of OPMC within the first three months after the effective date of this Order to discuss the Department's concerns with respect to the care and treatment of Patient A. I shall respond promptly and provide any and all documents and information within my 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 I possess my license.
7. Respondent shall comply with all terms, conditions, restrictions, limitations 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 any proceeding against Respondent as may be authorized pursuant to the law.