



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

PUBLIC

Michael A. Gonzalez, R.P.A.
Vice Chair

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

March 30, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Atul Kumar Agarwala, M.D.
Medaid Medical & Eye Center
1602 St. Nicholas Avenue
New York, NY 10040

RE: License No. 190087

Dear Dr. Agarwala:

Enclosed please find Order #BPMC 04-64 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect April 6, 2004.

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 or receipt of the 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

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". The signature is written in a cursive style with a large initial "A".

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

Executive Secretary

Board for Professional Medical Conduct

cc: Louis F. Simonetti, Esq.
Simonetti & Agnostino
420 Jericho Turnpike
Jericho, NY 11753

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

IN THE MATTER
OF
ATUL KUMAR AGARWALA, M.D.

CONSENT
ORDER

BPMC No. 04-64

Upon the application of (Respondent) ATUL KUMAR AGARWALA, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

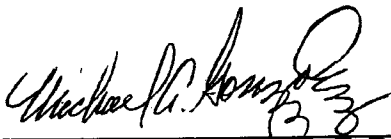
ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 3/26/04


MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
ATUL KUMAR AGARWALA, M.D.

CONSENT
AGREEMENT
AND
ORDER

ATUL KUMAR AGARWALA, M.D., representing that all of the following statements are true, deposes and says:

That on or about August 13, 1992, I was licensed to practice as a physician in the State of New York, and issued License No. 190087 by the New York State Education Department.

My current practice addresses are: Medaid Medical & Eye Center, 1602 St. Nicholas Avenue, New York, N.Y. 10040 and Healthcheck Eye Center, 1602 St. Nicholas Avenue, New York, N.Y. 10040, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

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

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the First Specification, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to Public Health Law Section 230-a(1), I shall be subject to a Censure and Reprimand.

Pursuant to Public Health Law Section 230, I shall be subject to a two year term of Conditions, as further set forth in attached Exhibit "B".

Pursuant to Public Health Law Sections 230-a(7) and (9), I shall be subject to a \$10,000 fine to be paid in full within 30 days of the effective date of this Order and as further set forth in attached Exhibit B.

I further agree that the Consent Order shall impose the following conditions in addition to those set forth in attached Exhibit "B":

That Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.



DATED 3/11/04

ATUL KUMAR AGARWALA, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 3/11/04



LOUIS SIMONETTI, ESQ.
Attorney for Respondent

DATE: 3/16/04



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

DATE: 3/24/04



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
ATUL KUMAR AGARWALA, M.D.

STATEMENT
OF
CHARGES

ATUL KUMAR AGARWALA, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 13, 1992, by the issuance of license number 190087 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. During periods between 2000-2002, Respondent gave inaccurate responses in connection with applications for staff privileges at Our Lady of Mercy Medical Center, Bronx, N.Y., Parkway Hospital, Queens, N.Y.
1. Respondent did so with intent to mislead,
- B. During periods between 2000-2002, with intent to mislead, Respondent gave inaccurate responses in connection with applications for staff privileges at Irvington General Hospital, Irvington, New Jersey, on his application for registration renewal with the New York State Education Department, and on his New York State Physician Profile.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

VIOLATION OF § TWENTY-EIGHT HUNDRED FIVE-K OF THE PUBLIC HEALTH

LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(14) by violating of section twenty-eight hundred five-k of the Public Health Law, as alleged in the facts of:

1. Paragraph A.

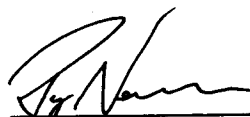
SECOND SPECIFICATION

FRAUDULENT PRACTICE

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

2. Paragraphs A, A1, and B.

DATED: March 16, 2004
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Conditions

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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].
6. The period of conditions shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the period of conditions will resume and Respondent shall fulfill any unfulfilled terms.
7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.

9. Respondent shall enroll in and complete a continuing education program in Medical Ethics. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the period of Conditions.
10. Respondent shall provide OPMC with a photocopy of each and every credentialing, privileges, employment and/or affiliation application he files with any hospital or other facility, within 30 days of such filing.
11. Payment of the fine imposed is a Condition imposed by this Order. The fine is payable in full within thirty (30) days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1245
Albany, New York 12237

12. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or violation of, these terms, the Director of OPMC and/or the Board may initiate any proceeding authorized by governing law against Respondent.