

Public

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

October 23, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Howard G. Gelfand, M.D.
10120 W. Flamingo Road
Suite 4-126
Las Vegas, NV 89147

Re: License No. 121496

Dear Dr. Gelfand:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 13-343. This order and any penalty provided therein goes into effect October 30, 2013.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

IN THE MATTER
OF
HOWARD GELFAND, M.D.

MODIFICATION
ORDER

Upon the proposed Application for a Modification Order of HOWARD GELFAND, M.D. (Respondent), which is made a part of this Modification Order, it is agreed to and

ORDERED, that the attached Application, and its terms, are adopted and SO ORDERED, and it is further

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

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

SO ORDERED.

DATE: 10/22/2013

REDACTED

ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

IN THE MATTER
OF
HOWARD GELFAND, M.D.

APPLICATION FOR
MODIFICATION
ORDER

HOWARD GELFAND, M.D., represents that all of the following statements are true:

That on or about September 16, 1974, I was licensed to practice as a physician in the State of New York, and issued License No. 121496 by the New York State Education Department.

My current address is 10120 W. Flamingo Road, Suite 4-126, Las Vegas, NV 89147, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I am currently subject to BPMC Order # BPMC 04-261 (Attachment I) (henceforth "Original Order"), which went into effect on November 29, 2004, and was issued upon an Application For Consent Order signed by me (henceforth "Original Application") and adopted by the Original Order. I hereby apply to the State Board for Professional Medical Conduct ("the Board") for an Order (henceforth "Modification Order"), modifying the Original Order; the Modification Order for which I apply shall remain in effect indefinitely, setting the following Conditions upon my practice:

- **THE CONDITIONS SET FORTH IN THE ORIGINAL ORDER INCLUDE:**

That Respondent shall maintain current registration of licensure 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

- **THIS CONDITION SHALL BE MODIFIED TO READ AS FOLLOWS:**

That Respondent shall, within 30 days of the issuance of this Modification Order, notify the New York State Education Department, Division of Professional Licensing Services, that his license status is "inactive", and shall provide proof of such notification to the Director of OPMC within 30 days thereafter. Respondent shall not reactivate his license.

That during all periods in which Respondent's license is "inactive", Respondent shall be subject to a Condition precluding him from practicing medicine in New York State. Respondent shall also be precluded from practicing in any setting where his practice is based solely on his New York license, and Respondent shall be precluded from reliance upon his license to practice medicine in New York to exempt him from the license, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated, or certified by the Board of Regents, Department of Education, Department of Health or the

Department of State. Respondent shall comply with all conditions set forth in attached Attachment II ("Guidelines for Closing a Medical Practice").

- All remaining Terms and Conditions will continue as written in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance by the Board of this Application, I knowingly waive my right to contest the Original Order or the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 10/8/13

REDACTED

HOWARD GELFAND; M.D.
RESPONDENT

The undersigned agree to the attached Application of Respondent and to its proposed penalty, terms and conditions.

DATE: _____

Attorney for Respondent, ESQ.

DATE: September 18, 2013

REDACTED

MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 10/21/13

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

ATTACHMENT I



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

November 22, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Howard Gelfand, M.D.
REDACTED

Re: License No. 121496

Dear Dr. Gelfand:

Enclosed please find Order #BPMC 04-261 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect November 29, 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 of receipt of the Order to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

REDACTED
Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Florence Gibbons, Esq.
Rogak & Gibbons, LLP
90 Merrick Avenue, Suite 520
East Meadow, NY 11554

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

IN THE MATTER
OF
HOWARD GELFAND, M.D.

CONSENT
ORDER

BPMC No. 04-261

Upon the application of Howard Gelfand, M.D., Respondent, 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: 11/21/04

REDACTED

~~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
HOWARD GELFAND, M.D.

CONSENT
AGREEMENT
AND
ORDER

Howard Gelfand, M.D., representing that all of the following statements are true, deposes and says:

That on or about September 16, 1974, I was licensed to practice as a physician in the State of New York, and issued License No. 121496 by the New York State Education Department.

My current address is REDACTED 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 1 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 specification, in full satisfaction of the charges against me, and agree to the following penalty:

My license to practice medicine in New York State shall be permanently restricted as follows:

I shall not practice obstetrics. I shall only perform gynecological surgery while directly supervised by a surgeon Board certified in Obstetrics and Gynecology.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain current registration of licensure 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 5/27/04

REDACTED

Howard Gelfand, M.D.
RESPONDENT

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

DATE: Oct 22, 2004

REDACTED

FLORENCE GIBBONS, ESQ.
Attorney for Respondent

DATE: Oct 22, 04

REDACTED

JOSEPH H. CAHILL, ESQ.
Bureau of Professional Medical Conduct

DATE: Nov 17 2004

REDACTED

DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
HOWARD GORDON GELFAND, M.D.

STATEMENT
OF
CHARGES

Howard Gordon Gelfand, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 16, 1974, by the issuance of license number 121496 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care and treatment to Patient A (patients are identified in the Appendix) during 1994. Respondent's care and treatment of Patient A failed to meet accepted standards of medical care, in that:
1. Respondent inappropriately incised the posterior vaginal fornix during the removal of the cervical cone.
 2. Respondent failed to adequately visualize the rent in the patient's rectosigmoid during laparoscopy.
 3. Respondent failed to immediately hospitalize the patient after learning that bowel mucosa was present in the peritoneal biopsy specimen.
- B. Respondent provided medical care and treatment to Patient B during 1992. Respondent's care and treatment of Patient B failed to meet accepted standards of medical care in that:
1. Respondent failed to adequately evaluate and repair Patient B's episiotomy breakdown during November of 1992.

SPECIFICATION OF CHARGES
NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with negligence on more than one occasion in violation of New York Education Law § 6530(3), in that Petitioner charges two or more of the following

1. The facts in Paragraph A and A.1, A and A.2 and A.3.
2. The facts in Paragraph B and B.1

DATED: *November 2*
October, 2004
Albany, New York

REDACTED

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

ATTACHMENT II

ATTACHMENT II

GUIDELINES FOR CLOSING A MEDICAL PRACTICE

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in compliance with the terms of the Modification Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine in New York State.
2. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
3. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Modification Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.
4. Within 15 days of the Modification Order's effective date, if Licensee hold a Drug Enforcement Administration (DEA) certificate, Licensee shall advise the DEA in writing of the licensure action and shall promptly surrender his DEA controlled substance certificate, privileges, and any unused surrender any

unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011. Within 30 days of having done so, Licensee shall provide documentary proof of compliance with this requirement to the Director of OPMC.

5. Within 15 days of the Modification Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Licensee shall destroy all prescription pads bearing Licensee's name. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications. Within 30 days of having done so, Licensee shall provide documentary proof of compliance with this requirement to the Director of OPMC.
6. Within 15 days of the Modification Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
7. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while Licensee is barred from practicing medicine. Licensee may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Modification Order's effective date.
8. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Modification Order's effective date.
9. Failure to comply with the above directives may result in civil or criminal penalties. Under N.Y. Educ. Law § 6512, practicing medicine by anyone not authorized to practice is a Class E Felony, punishable by imprisonment for up to 4 years. Professional misconduct may result in penalties including revocation of license and/or fines of up to \$10,000 for each specification of misconduct, under N.Y. Pub. Health Law § 230-a.