



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 25, 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