



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Richard F. Daines, M.D.
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NYS Department of Health
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Office of Professional Medical Conduct

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Chair
Michael A. Gonzalez, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

October 5, 2007

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Barbara Louise Nichols, M.D.
115 East 90th Street
Apartment 3A
New York, New York 10128

RE: License No. 143069

Dear Dr. Nichols:

Enclosed is a copy of Order #BPMC 07-216 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect October 11, 2007.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this 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 fluid and cursive, with a large initial "A" and "M".

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

cc: Ralph A. Erbaio, Jr., Esq.
Hoffman Eininger & Polland PLLC
220 East 42nd Street, Suite 435
New York, New York 10017

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

IN THE MATTER
OF
BARBARA LOUISE NICHOLS, M.D.

CONSENT
ORDER

BPMC No. 07-216

Upon the application of BARBARA LOUISE NICHOLS, 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 it is further

ORDERED, that this Consent 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.

DATE: 10-4-2007



KENDRICK A. SEARS, 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
BARBARA LOUISE NICHOLS, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

BARBARA LOUISE NICHOLS, M.D., representing that all of the following statements are true, deposes and says:

That on or about August 1, 1980, I was licensed to practice as a physician in the State of New York, and issued License No. 143069 by the New York State Education Department.

My current address is 115 East 90th Street, Apt. 3A, NY, NY 10128, 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 (Board) has charged me with 68 specifications of professional misconduct.

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

I agree not to contest the twelfth specification, in full satisfaction of the charges against me, and agree to the following penalty:

1. Pursuant to § 230-a (2) of the Public Health Law, my license to practice medicine shall be suspended for a period of one year, with the first three months to be served as a period of actual suspension and the last nine months of the suspension to be stayed;
2. Pursuant to § 230-a (9) of the Public Health Law, I shall be

placed on probation for a period of three years beginning upon the completion of the three month period of actual suspension, subject to the terms set forth in Exhibit " B" attached below;

3. Pursuant to § 230-a (7) of the Public Health Law, I shall pay a fine in the amount of \$10,000, which shall be paid within 90 days of the effective date of this Order. Payment must be submitted to:

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

4. Pursuant to N.Y. Pub. Health Law § 230-a (3), my license to practice medicine in New York State shall be limited to preclude the prescribing, dispensing, or administering of any controlled substances, any natural or synthetic hormones, and tamoxifen.
5. Pursuant to N.Y. Pub. Health Law § 230-a (3), my license to practice medicine in New York State shall be limited to preclude the provision or ordering of treatment for any patient except for patients with whom I have a qualifying physician-patient relationship. For purposes of this Consent Agreement and Order, a qualifying physician-patient relationship shall mean that I have conducted at least one in-person medical evaluation of the patient. An in-person medical evaluation shall mean that I have conducted the evaluation in the physical presence of the patient, without regard to whether other portions of the evaluation have been conducted by other health professionals.

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

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee 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 Consent 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 Consent 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 Consent

Order shall constitute misconduct as defined by N.Y. Educ. 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 N.Y. Pub. 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 Consent 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. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

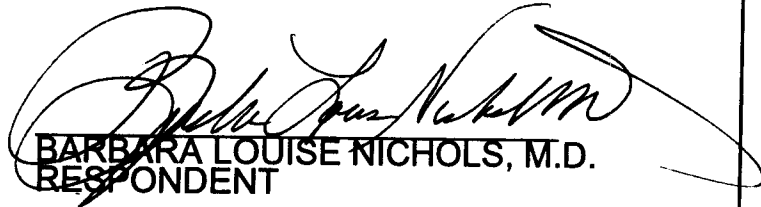
I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this

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 I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent 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

9/19/07



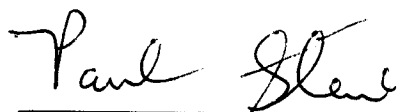
BARBARA LOUISE NICHOLS, M.D.
RESPONDENT

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

DATE: 9-19-07


RALPH A. ERBAIO, Jr., ESQ.
Attorney for Respondent

DATE: 9-21-07


PAUL STEIN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 10/4/07


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
BARBARA LOUISE NICHOLS, M.D.

STATEMENT
OF
CHARGES

BARBARA LOUISE NICHOLS, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 1, 1980, by the issuance of license number 143069 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. In or about June, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient A by reviewing a set of records for Patient A provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing prescriptions to Modern Therapy, L.L.C. for Recombinant Human Growth Hormone (HGH) for Patient A. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.
1. Respondent failed to adequately evaluate Patient A.
 2. Respondent failed to adequately treat Patient A.
 3. Respondent prescribed medication for Patient A without medical indication.
 4. Respondent failed to keep an adequate record for Patient A.
- B. In or about August, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient B by reviewing a set of records for Patient B provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing a prescription to Modern Therapy, L.L.C. for testosterone gel for

Patient B. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient B.
2. Respondent failed to adequately treat Patient B.
3. Respondent prescribed medication for Patient B without medical indication.
4. Respondent failed to keep an adequate record for Patient B.

C. In or about August, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient C by reviewing a set of records for Patient C provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing a prescription to Modern Therapy, L.L.C. for testosterone cypionate for Patient C. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient C.
2. Respondent failed to adequately treat Patient C.
3. Respondent prescribed medication for Patient C without medical indication.
4. Respondent failed to keep an adequate record for Patient C.

D. In or about October, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient D by reviewing a set of records for Patient D provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing prescriptions to Modern Therapy, L.L.C. for Teslac, Recombinant Human Growth Hormone (HGH), Testosterone Cypionate, and Human Chorionic Gonadotropin (HCG) for Patient D. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient D.
2. Respondent failed to adequately treat Patient D.
3. Respondent prescribed medication for Patient D without medical indication.
4. Respondent failed to keep an adequate record for Patient D.

E. In or about February, March and/or June, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient E by reviewing a set of records for Patient E provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing prescriptions to Modern Therapy, L.L.C. for Human Chorionic Gonadotropin (HCG), testosterone gel, Recombinant Human Growth Hormone (HGH), and Nandrolone to Patient E. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient E.
2. Respondent failed to adequately treat Patient E.
3. Respondent prescribed medication for Patient E without medical indication.
4. Respondent failed to keep an adequate record for Patient E.

F. In or about May, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient F by reviewing a set of records for Patient F provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing prescriptions to Modern Therapy, L.L.C. for testosterone cypionate, Human Chorionic Gonadotropin (HCG), and Recombinant Human Growth Hormone (HGH) for Patient F. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient F.
2. Respondent failed to adequately treat Patient F.
3. Respondent prescribed medication for Patient F without medical indication.
4. Respondent failed to keep an adequate record for Patient F.

G. In or about November, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient G by reviewing a set of records for Patient G provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing a prescription to Modern Therapy, L.L.C. for Recombinant Human Growth Hormone (HGH) for Patient G. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient G.
2. Respondent failed to adequately treat Patient G.
3. Respondent prescribed medication for Patient G without medical indication.
4. Respondent failed to keep an adequate record for Patient G.

H. In or about November, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient H by reviewing a set of records for Patient H provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing a prescription to Modern Therapy, L.L.C. for Recombinant Human Growth Hormone (HGH) for Patient H. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient H.
2. Respondent failed to adequately treat Patient H.
3. Respondent prescribed medication for Patient H without medical

indication.

4. Respondent failed to keep an adequate record for Patient H.

I. In or about August 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient I by reviewing a set of records for Patient I provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing prescriptions to Modern Therapy, L.L.C. for Delatestryl, Recombinant Human Growth Hormone (HGH), Human Chorionic Gonadotropin (HCG), and Testosterone Cypionate for Patient I. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient I.

2. Respondent failed to adequately treat Patient I.

3. Respondent prescribed medication for Patient I without medical indication.

4. Respondent failed to keep an adequate record for Patient I.

J. In or about August and/or September, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient J by reviewing a set of records for Patient J provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing a prescription to Modern Therapy, L.L.C. for Recombinant Human Growth Hormone ("HGH") for Patient J. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient J.

2. Respondent failed to adequately treat Patient J.

3. Respondent prescribed medication for Patient J without medical indication.

4. Respondent failed to keep an adequate record for Patient J.

K. In or about September, 2002, the Respondent, working from her residence in Manhattan, provided medical care to Patient K by reviewing a set of records for Patient K provided by Modern Therapy, L.L.C. of Miami Beach Florida and issuing prescriptions to Modern Therapy, L.L.C. for Nandrolone Decanoate and Tamoxifen for Patient K. Respondent received monetary compensation from Modern Therapy, L.L.C. for these services.

1. Respondent failed to adequately evaluate Patient K.
2. Respondent failed to adequately treat Patient K.
3. Respondent prescribed medication for Patient K without medical indication.
4. Respondent failed to keep an adequate record for Patient K.

SPECIFICATION OF CHARGES

FIRST THROUGH ELEVENTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

1. Paragraphs A and A1-4.
2. Paragraphs B and B1-4.
3. Paragraphs C and C1-4.
4. Paragraphs D and D1-4.
5. Paragraphs E and E1-4.
6. Paragraphs F and F1-4

7. Paragraphs G and G1-4.
8. Paragraphs H and H1-4.
9. Paragraphs I and I1-4.
10. Paragraphs J and J1-4.
11. Paragraphs K and K1-4.

TWELFTH 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:

12. Paragraphs A and A1-4; B and B1-4; C and C1-4.; D and D1-4; E and E1-4; F and F1-4; G and G1-4; H and H1-4; I and I1-4; J and J1-4; and/or K and K1-4.

THIRTEENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

13. Paragraphs A and A1-4; B and B1-4; C and C1-4.; D and D1-4; E and E1-4; F and F1-4; G and G1-4; H and H1-4; I and I1-4; J and J1-4; and/or K and K1-4.

FOURTEENTH THROUGH TWENTY-FOURTH SPECIFICATIONS

UNWARRANTED TESTS/TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(35) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of:

14. Paragraphs A and A3.
15. Paragraphs B and B3.
16. Paragraph C and C3.
17. Paragraphs D and D3
18. Paragraphs E and E3.
19. Paragraphs F and F3.
20. Paragraphs G and G3.
21. Paragraphs H and H3.
22. Paragraph I and I3.
23. Paragraph J and J3.
24. Paragraph K and K3.

TWENTY-FIFTH THROUGH THIRTY-FIFTH SPECIFICATIONS

PERMITTING, AIDING OR ABETTING

AN UNLICENSED PERSON

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (11) by permitting, aiding or abetting an unlicensed person to perform activities requiring a license as alleged in the facts of the following:

25. Paragraph A.
26. Paragraph B.

27. Paragraph C.
28. Paragraph D
29. Paragraph E.
30. Paragraph F.
31. Paragraph G.
32. Paragraph H.
33. Paragraph I.
34. Paragraph J.
35. Paragraph K.

THIRTY SIXTH THROUGH FORTY-SIXTH SPECIFICATIONS

PATIENT REFERRAL FEES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (18) by directly or indirectly receiving or agreeing to receive any fee or other consideration from a third party for the referral of a patient or in connection with the performance of professional services as alleged in the facts of:

36. Paragraph A.
37. Paragraph B.
38. Paragraph C.
39. Paragraph D
40. Paragraph E.
41. Paragraph F.
42. Paragraph G.
43. Paragraph H.
44. Paragraph I.
45. Paragraph J.
46. Paragraph K.

FORTY-SEVENTH THROUGH FIFTY-SEVENTH SPECIFICATIONS

FEE SPLITTING

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (19) by sharing fees for professional services with any person other than a partner, employee, or associate in a professional firm or corporation, a professional subcontractor or consultant authorized to practice medicine, or a legally authorized trainee as alleged in the facts of:

47. Paragraph A.
48. Paragraph B.
49. Paragraph C.
50. Paragraph D.
51. Paragraph E.
52. Paragraph F.
53. Paragraph G.
54. Paragraph H.
55. Paragraph I.
56. Paragraph J.
57. Paragraph K.

FIFTY-EIGHTH THROUGH SIXTY-EIGHTH SPECIFICATIONS


FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

58. Paragraphs A and A4.
59. Paragraphs B and B4.
60. Paragraphs C and C4.
61. Paragraphs D and D4.

62. Paragraphs E and E4.
63. Paragraphs F and F4.
64. Paragraphs G and G4.
65. Paragraphs H and H4.
66. Paragraphs I and I4.
67. Paragraphs J and J4.
68. Paragraphs K and K4.

DATE: New York, New York
September 4, 2007



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Terms of Probation

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 N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, 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 this 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, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 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 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

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, hospital charts, and/or electronic records; 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 comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.