



***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 22, 2004

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Michael Gerard Wayne, D.O.  
222 E. 19th Street, Apt. 3J  
New York, NY 10003

Re: License No. 203000

Dear Dr. Wayne:

Enclosed please find Order #BPMC 04-56 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect March 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,

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

Board for Professional Medical Conduct

Enclosure

cc: Wilfred T. Friedman, Esq.  
Friedman and Mahdavian  
36 West 44th Street, Suite 816  
New York, NY 10036

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

IN THE MATTER  
OF  
MICHAEL GERARD WAYNE, D.O.

CONSENT  
ORDER

BPMC No. 04-56

Upon the application of (Respondent) MICHAEL GERARD WAYNE, D.O. 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: 3/19/04

  
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  
MICHAEL GERARD WAYNE, D.O.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

MICHAEL GERARD WAYNE, D.O., representing that all of the following statements are true, deposes and says:

That on or about May 14, 1996, I was licensed to practice as a physician in the State of New York, and issued License No. 203000 by the New York State Education Department. I am currently subject to a Nondisciplinary Order of Conditions issued on January 22, 2003 (ND-03-02) that will continue in effect concurrently with this Consent Order, and I will continue to be subject to the terms and conditions imposed by ND-03-02 in addition to the terms and conditions set forth below.

My current address is set forth in attached Appendix "A", 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, a Violation Of a Condition Imposed Pursuant to Public Health Law Section 230, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to §230-a(2) of the Public Health Law, my license to practice medicine in the State of New York shall be suspended for a period of 12 months, *nunc pro tunc*, with an effective date of March 18, 2003, with the first 8 months to be considered a period of actual suspension, and with the last 4 months of this suspension to be stayed.

Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of 60 months, beginning on the date of the Board's issuance of this Consent Order, subject to the terms set forth in attached Exhibit "B."

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

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 this 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.


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3/2/04

  
MICHAEL GERARD WAYNE, D.O.  
RESPONDENT

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

DATE: 3/3/04

  
WILFRED T. FRIEDMAN, ESQ.  
Attorney for Respondent

DATE: March 8 2004

  
MARCIA E. KAPLAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: MARCH 17, 2004

  
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  
MICHAEL GERARD WAYNE, D.O.**

**STATEMENT  
OF  
CHARGES**

MICHAEL GERARD WAYNE, D.O., the Respondent, was authorized to practice medicine in New York State on or about May 14, 1996, by the issuance of license number 203000 by the New York State Education Department. Respondent is subject to conditions imposed pursuant to section 230 of the Public Health Law, as set forth in Nondisciplinary Order of Conditions issued on January 22, 2003 (ND-03-02).

**FACTUAL ALLEGATIONS**

- A. While assisting in a retrospective research study prior to March 10, 2003, Respondent filed false reports with regard to data purportedly extracted from medical records.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

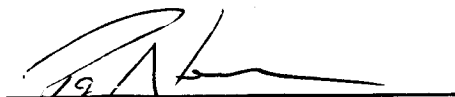
**VIOLATION OF CONDITION IMPOSED PURSUANT  
TO PUBLIC HEALTH LAW SECTION 230**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(29) by violating a condition imposed pursuant to section two hundred thirty of the public health law, as alleged in the facts of:

1. Paragraph A.



DATED: March 7, 2004  
New York, New York



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 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 the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation 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.
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 probation period 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 probation period will resume and Respondent shall fulfill any unfulfilled probation 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 Respondent's practice locations or at OPMC offices. Respondent's office record for each patient admitted to a hospital shall include copies of the following entries in the patient's hospital record: the fact sheet, admission note, discharge summary, and operative report.
8. Respondent shall maintain complete and legible office and hospital 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 practice medicine only when supervised in his medical practice. Such practice shall take place in a facility licensed pursuant to Article 28 of the Public Health Law or other supervised setting subject to the approval of the Director of OPMC. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. Respondent shall not practice medicine until a practice supervisor has been approved.
  - a. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall ensure that the practice supervisor is familiar with the Order and terms of probation, and willing to report to OPMC.
  - b. Respondent shall authorize the practice supervisor to have access to his patient records and to submit quarterly written reports, to the Director of OPMC, regarding Respondent's practice. The Supervisor's review and narrative reports shall address all aspects of Respondent's clinical practice and conduct including, but not limited to, the evaluation and treatment of patients, general demeanor, time and attendance, the supervisor's assessment of patient records selected for review and other such on-duty conduct as the supervisor deems appropriate to report.
  - c. The Respondent shall comply with any other monitoring and/or reporting conditions, and shall provide or make available to the Director any and all documents and information, as may be deemed appropriate by the Director in the Director's duty and discretion exercised reasonably and to the full extent as set forth in §230 of the Public Health Law and §6530 of the N.Y. Education Law.
  - d. Respondent shall be solely responsible for all expenses associated with monitoring.
  - e. Respondent shall cause the practice supervisor to submit monthly reports to OPMC, regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practices, and compliance or failure to comply with any condition herein. These reports shall be accompanied by an affirmation by the practice supervisor to the truth of the matters contained in those reports.
  - f. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director prior to Licensee's practice after the effective date of this Order.

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3/2/04

10. Respondent shall enroll in and complete a continuing education program, in professional medical ethics, subject to the Director of OPMC's prior written approval, which shall be completed within the first year of the probation period.
11. 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 a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.