



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

September 27, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Allan Levin, M.D.
1698 Route 25A
Laurel Hollow, NY 11791

Re: License No. 135513

Dear Dr. Levin:

Enclosed please find Order #BPMC 04-220 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect October 4, 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: Michael Schoppman, Esq.
Kern, Augustine, Conroy & Schoppman, P.C.
420 Lakeville Road
Lake Success, NY 11042

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

IN THE MATTER
OF
ALLAN LEVIN, M.D.

CONSENT
ORDER

BPMC No. 04-220


Upon the proposed agreement of ALLAN LEVIN, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 9/23/04


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

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

**IN THE MATTER
OF
ALLAN LEVIN, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

ALLAN LEVIN, M.D., representing all statements herein made to be true, deposes and says:

That on or about August 11, 1978, I was licensed to practice as a physician in the State of New York, having been issued License No. 135513 by the New York State Education Department.

My current address is 1698 Route 25A, Laurel Hollow, N.Y. 11791, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with two (2) specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I assert that I cannot successfully defend against at least one of the alleged acts of misconduct, in full satisfaction of the charges against me. I hereby agree to the following penalty:

- (1) 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 3 years, with the first year to be served as a period of actual suspension and with the last two (2) years of said suspension to be stayed. I shall be subject to a condition that I comply with Exhibit "D," "Guidelines For Closing a Medical Practice Following a

Revocation, Surrender or Suspension (of 6 Months or More) of a Medical License,” attached hereto.”

- (2) Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of three (3) years, in accordance with the terms set forth in Exhibit “B,” annexed hereto, which shall commence one (1) year after the effective date of the Consent Order.
- (3) Pursuant to §230-a(9) of the Public Health Law, and during the one year period of actual suspension of my license to practice as a physician in the State of New York, I shall be required to perform 100 hours of community/public service, in a non-medical setting, in accordance with the terms set forth in Exhibit “C.” The service must to a needy or under-served population. A written proposal for community/public service must be submitted to, and is subject to the written approval of the Director of OPMC. Community/public service performed prior to written approval shall not be credited toward compliance with this Order.
- (4) Pursuant to §230-a(8) I shall be required to enroll in and successfully complete Continuing Medical Education courses of study in the areas of both Medical Ethics and Medical Record Keeping; and an intensive course of study in the field of otolaryngology in preparation for Board Certification in said specialty of medicine.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain active registration of Respondent's license with the New York State

Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent.

Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.


I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

DATE: 9-1-04



ALLAN LEVIN, M.D.
RESPONDENT

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE:

9/9/04



MICHAEL SCHOPPMAN, ESQ.
Attorney for Respondent

DATE:

9/13/04



CLAUDIA MORALES BLOCH
Associate Counsel
Bureau of Professional
Medical Conduct

DATE:

9/21/04



DENNIS J. GRAZIANO
Director
Office of Professional
Medical Conduct

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

IN THE MATTER
OF
ALLAN LEVIN, M.D.

STATEMENT
OF
CHARGES

ALLAN LEVIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 11, 1978, by the issuance of license number 135513 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Between on or about June 6, 2001 and on or about June 24, 2002, Respondent administered Risperdal to Individual A (whose identity is set forth in the attached Appendix) on numerous occasion without appropriate medical indication and in a medically inappropriate manner and/or for other than proper medical purposes.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

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 as alleged in the facts of the following:

1. The facts of paragraphs A

EXHIBIT "A"

SECOND SPECIFICATION

FRAUDULENT PRACTICE

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

2. The facts of paragraphs A

DATED: ^{Sept}~~August~~ 21, 2004
New York, New York

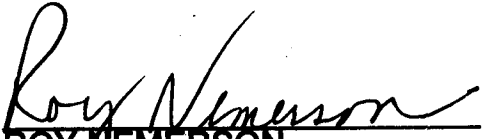

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

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 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.
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 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 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.

PRACTICE MONITOR

9. Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
10. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection no less than 20% of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor, or failure to comply with any term or condition of this order shall be reported within 24 hours to OPMC.
11. For each and every surgical procedure performed by Respondent in his office based practice, Respondent shall maintain a written log which shall record the name of the patient, the date of the procedure, the type of procedure performed, each person present and/or assisting at the procedure and the role each person performed in connection with said procedure. The log shall be reviewed by the practice monitor and Respondent shall cause the monitor to report to OPMC Respondent's compliance with the requirements set forth herein for maintenance of the log.
12. Within the first 60 days of probation, Respondent shall contract a certified Coding/Billing review Company, proposed by Respondent and approved by OPMC, and have completed by the approved company a full and complete audit of Respondent's billing and coding practices. Respondent shall cause said audit report to be provided to OPMC and the practice monitor. Respondent shall fully comply and/or implement changes, recommendation and/or methods recommended as a result of said audit and approved by OPMC. Respondent shall cause the practice monitor to review compliance with the resulting coding and billing method recommended as a result of said audit and approved by OPMC.
13. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
14. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
15. 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 of OPMC prior to Respondent's practice after the effective date of this Order.

PSYCHIATRIC EVALUATION AND TREATMENT

16. Respondent shall submit to a full and complete psychiatric examination, conducted by a board certified psychiatrist proposed by Respondent and approved in writing and in advance by the Director of OPMC.
17. Respondent shall cause the approved psychiatrist to prepare a report of his/her findings and provide said report to the Director of OPMC. Said report shall include the psychiatrist's proposal, if any, for treatment.
18. Respondent shall not practice medicine in the State of New York unless and until the terms of the two immediately preceding paragraphs are satisfied. The Respondent may, at his election, commence his satisfaction of such terms during the one year period of actual suspension and prior to the commencement of the probation period.
19. Respondent shall continue in treatment and/or therapy as recommended by the evaluating psychiatrist and approved by OPMC as long as said psychiatrist determines is necessary, and agreed to by OPMC.
20. Respondent shall cause the psychiatrist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the psychiatrist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice.

CONTINUING MEDICAL EDUCATION

21. Respondent shall provide evidence, satisfactory to the Director of OPMC, of his compliance with the several requirements imposed on him pursuant to §230-a(8) of the Public Health Law. The Respondent may, at his election, commence his satisfaction of such terms during the one year period of actual suspension and prior to the commencement of the probation period. Respondent shall be solely responsible for all expenses and/or fees that may be associated with the compliance with these and all other subparagraphs
22. Respondent shall take and complete a course in Medical Ethics and in Medical record keeping proposed by Respondent and subject to the prior written approval of the Director. This continuing education program shall be completed within the first year of the probation period, unless the Order specifies otherwise.
23. Respondent shall enroll in and successfully complete an intensive course of study, in the field of otolaryngology in preparation for Board Certification in said specialty of medicine, which shall be proposed by Respondent and subject to the prior written approval of the Director. This continuing education program shall be completed within the first year of the probation period, unless the Order specifies otherwise.

COMPLIANCE

24. 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.

EXHIBIT "C"

COMMUNITY/PUBLIC SERVICE

1. Respondent shall provide evidence, satisfactory to the Director of OPMC, of his compliance with the requirement imposed on him pursuant to §230-a(9) of the Public Health Law, to perform 100 hours of community/public service in a non-medical setting during the one year period of actual suspension of Respondent's license to practice as a physician in the State of New York.
2. Respondent shall cause the organization(s) and/or facility in which community/public service is performed to report, in writing, to the Director of OPMC on Respondent's compliance with the terms of service and to provide verification of the number of hours spent in such service by Respondent as well as any non-compliance with the agreed to services to be performed.
3. Respondent shall complete said 100 hours of community/public service within one year of the effective date of this Order, unless the Director of OPMC approves an extension in writing.

EXHIBIT "D"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more) OF A MEDICAL LICENSE

1. Respondent shall immediately cease and desist the practice of medicine in compliance with the terms of the Consent Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within fifteen (15) days of the Consent Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty (30) days of the Consent Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty (30) days of the Consent Order's effective date, Respondent 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 patients for at least six (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (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 ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized 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 sent at reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.
5. Within fifteen (15) days of the Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within fifteen (15) days of the Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at his practice location, Respondent shall dispose of all medications.
7. Within fifteen (15) days of the Order's effective date, Respondent shall remove

from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the Order's effective date.

10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four (4) years, under Section 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under Section 230-a of the Public Health Law.