



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.
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NYS Department of Health*

Dennis P. Whalen
*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

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Vice Chair

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

PUBLIC

February 18, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Michael Jackowitz, D.O.
1030 Arbolado Road
Santa Barbara, CA 93103

Re: License No. 190476

Dear Dr. Jackowitz:

Enclosed please find Order #BPMC 05-34 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect February 25, 2005.

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: Anthony Z. Scher, Esq.
Wood & Scher
The Harwood Building
Scarsdale, NY 93103

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

IN THE MATTER
OF
MICHAEL JACKOWITZ, D.O.

CONSENT
ORDER

BPMC No. 05-34

Upon the application of MICHAEL JACKOWITZ, D.O. (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 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: 2-18-2005


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
MICHAEL JACKOWITZ, D.O.**

**CONSENT
AGREEMENT
AND
ORDER**

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

That on or about September 21, 1992, I was licensed to practice as a physician in the State of New York, and issued License No. 190476 by the New York State Education Department.

My current address is 1030 Arbolach^{do} Road, Santa Barbara, California 93013, 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 Thirty-Seven 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 admit guilt to the First and Sixteenth Specifications in full satisfaction of the charges against me, and agree to the following penalty: a one year suspension of my license to practice medicine beginning the effective date of this order; further, I shall be on probation for a period of three years subject to the Terms of Probation attached hereto as "Exhibit B", and I shall comply with the guidelines set forth in "Exhibit C".

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.

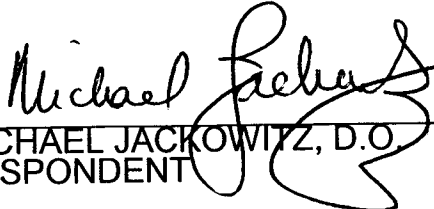
I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall 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. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

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

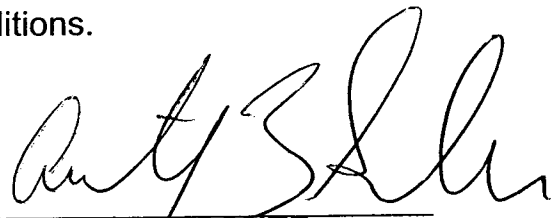
administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATE: 1/24/05



MICHAEL JACKOWITZ, D.O.
RESPONDENT

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

DATE: 2/2/05


ANTHONY Z. SCHER
Attorney for Respondent

DATE: 2/4/05


KEVIN P. DONOVAN
ASSOCIATE COUNSEL
Bureau of Professional Medical Conduct

DATE: 2/11/05


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
MICHAEL JACKOWITZ, M.D.

STATEMENT
OF
CHARGES

PDVB
MICHAEL JACKOWITZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 21, 1992, by the issuance of license number 190476 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Between around June 2001 and August 2002, Respondent fraudulently and/or inappropriately prescribed Sonata and/or Viagra to Patient A (patients are identified in the attached Appendix A), without adequate evaluation and/or without maintaining records.
- B. In or around 2002, Respondent inappropriately gave Patient A signed official New York State prescription forms with no patient or drug name.
- C. In or around 2002, Respondent inappropriately gave Patient A signed regular prescription forms with no patient or drug name.
- D. In or around 2002, Respondent permitted Patient A to order items from a pharmaceutical supplier using Respondent's DEA certificate.
- E. Between around June 2001 and August 2002, at the request of Patient A, Respondent fraudulently and/or inappropriately provided prescriptions for Stadol,

Ativan, Vioxx, and/or Doxycycline for Patients B through Z without meeting with the patients, performing an adequate history and/or physical examination, sending the prescriptions to them, notifying them that prescriptions had been issued in their names, and/or maintaining an adequate record.

- F. Respondent provided prescriptions for Stadol and/or Ativan for Patients B through Z, knowing that such prescriptions were being used to permit Patient A to perform laser hair removal, laser face resurfacing, mole removal, spider vein removal, tattoo removal, and/or scar revision without adequate supervision by a physician.
- G. At the request of Patient A, who was not licensed to practice medicine, Respondent fraudulently and/or inappropriately provided prescriptions for Stadol and/or Ativan in the name of Patient A's purported customers, Patients B through Z, despite the fact that such systemic medications would only be indicated for procedures performed by or under the supervision of a physician.
- H. At the request of Patient A, who was not licensed to practice medicine, Respondent fraudulently and/or inappropriately provided prescriptions for Stadol and/or Ativan in the name of Patient A's purported customers, listed as Patients B through Z, thus aiding Patient A in performing laser face resurfacing, mole removal, spider vein removal, tattoo removal, and scar revision, activities which Respondent is not qualified to perform or supervise.
- I. Respondent received payments from Patient A in exchange for Respondent providing medications and being "medical director" of Patient A's business.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the following:

1. The facts of paragraphs A, B, C, D, E, F, G, H and/or I.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

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

2. The facts of paragraphs A, B, C, D, E, F, G, H and/or I.

THIRD THROUGH ELEVENTH SPECIFICATIONS

GROSS NEGLIGENCE

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

3. The facts of paragraph A.
4. The facts of paragraph B.
5. The facts of paragraph C.
6. The facts of paragraph D.
7. The facts of paragraph E.
8. The facts of paragraph F.
9. The facts of paragraph G.
10. The facts of paragraph H.

11. The facts of paragraph I.

TWELFTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law § 6530(6) by practicing the profession of medicine with gross incompetence as alleged in the following:

12. The facts of paragraphs A, B, C, D, E, F, G, H and/or I.

THIRTEENTH THROUGH NINETEENTH SPECIFICATION

AIDING AND ABETTING AN UNLICENSED PERSON

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

13. The facts of paragraphs B.
14. The facts of paragraphs C.
15. The facts of paragraphs D.
16. The facts of paragraphs F.
17. The facts of paragraphs G.
18. The facts of paragraphs H.
19. The facts of paragraphs I.

TWENTIETH THROUGH TWENTY-EIGHTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as set forth in the following:

20. The facts of paragraph A.
21. The facts of paragraph B.
22. The facts of paragraph C.
23. The facts of paragraph D.
24. The facts of paragraph E.
25. The facts of paragraph F.
26. The facts of paragraph G.
27. The facts of paragraph H.
28. The facts of paragraph I.

TWENTY-NINTH THROUGH THIRTY-SEVENTH SPECIFICATIONS

FRAUD

Respondent is charged with practicing the profession fraudulently as defined in N.Y. Educ. Law § 6530(2) as set forth in the following:

29. The facts of paragraph A.
30. The facts of paragraph B.
31. The facts of paragraph C.
32. The facts of paragraph D.
33. The facts of paragraph E.
34. The facts of paragraph F.
35. The facts of paragraph G.
36. The facts of paragraph H.
37. The facts of paragraph I.

DATED: Albany, New York

February 4, 2005


PETER D. VAN BUREN
DEPUTY COUNSEL

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. 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.
6. 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.
7. 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.

8. Within thirty days of the effective date of the order, 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.
 - a. 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 fewer 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 shall be reported within 24 hours to OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. 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.
9. Respondent may prescribe controlled substances only after obtaining prior approval of the practice monitor or another physician approved in writing by the Director.
10. Respondent shall enroll in and complete continuing education programs in the areas of the appropriate prescribing of controlled substances, medical ethics, and medical record keeping. Each continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within one year from the effective date of this order.
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.

EXHIBIT "C"

**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.