



New York State Board for Professional Medical Conduct

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

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NYS Department of Health
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Ansel R. Marks, M.D., J.D.
Executive Secretary

PUBLIC

December 16, 1999

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Rodolfo Byrne, M.D.
196 Graham Avenue
Brooklyn, NY 11206

RE: License No.: 110230

Dear Dr. Byrne:

Enclosed please find Order #BPMC 99-311 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **December 16, 1999.**

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 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: Jeffrey M. Rubin, Esq.
Rubin & Shang
9 East 40th Street
New York, NY 10016

Kathleen S. Wasson, Esq.

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

IN THE MATTER
OF
RODOLFO BYRNE, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC #99-311

STATE OF NEW YORK)
COUNTY OF Kings) ss:

RODOLFO BYRNE, M.D., (Respondent) being duly sworn, deposes and says:

That on or about July 22, 1956, I was licensed to practice as a physician in the State of New York, having been issued License No. 110230 by the New York State Education Department.

My current address is Centro Medico Hispano, 196 Graham Avenue, Brooklyn, NY 11206, 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 eight (8) specifications of professional misconduct.

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

I do not contest the Second through Eighth Specifications, in full satisfaction of the charges against me. I hereby agree to the following penalty:

My license to practice medicine shall be subject to a five-year suspension, the entire period of which shall be stayed on the condition that I successfully complete a three-part retraining program and a five-year period of probation, with a practice monitor, under the terms and conditions set forth in the "Terms

of Probation" attached hereto as Exhibit "B".

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 current 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/her 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/her 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)(McKinney Supp 1999).

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.



RODOLFO BYRNE, M.D.
RESPONDENT

DATED Nov. 30, 1999

Sworn to before me
on this 30th day of
Nov. 1999



NOTARY

JUAN J. WILLIAMS
Notary Public, State of New York
No. 01W15013317
Qualified in Kings County
Commission Expires July 15, 2001

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

IN THE MATTER
OF
RODOLFO BYRNE, M.D.

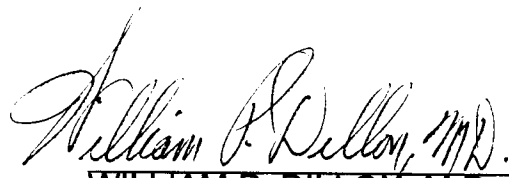
CONSENT
ORDER

Upon the proposed agreement of RODOLFO BYRNE, 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: 12/14/99



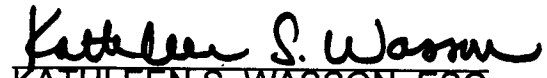
WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

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


DATE: 11/30/99


JEFFREY M. RUBIN, ESQ.
Attorney for Respondent

DATE: 12/6/99


KATHLEEN S. WASSON, ESQ.
Senior Attorney
Bureau of Professional
Medical Conduct

DATE: December 9, 1999


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

IN THE MATTER
OF
RUDOLFO BYRNE, M.D.

STATEMENT
OF
CHARGES

RUDOLFO BYRNE, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 23, 1971, by the issuance of license number 110230 by the New York State Education Department. Respondent treated the patients herein at his medical office(s) located at 196 Graham Avenue, Brooklyn, NY 11206. Each of these patients is a Medicaid recipient and is identified in Appendix A, attached.

FACTUAL ALLEGATIONS

- A. Between in or about November, 1991 and in or about April, 1996, Patient A was treated by Respondent on approximately thirty (30) occasions.
1. Throughout the period, Respondent failed to obtain and/or note an adequate history for Patient A.
 2. Throughout the period, Respondent failed to perform and/or note an adequate physical examination of Patient A.
 3. On or about November 7, 1991, Respondent inappropriately diagnosed Patient A with asthma.

4. On or about February 22, 1992, Respondent inappropriately diagnosed Patient A with herpes zoster.
5. On or about December 29, 1992, Respondent:
 - a. Failed to adequately evaluate and/or follow up Patient A's diabetes mellitus, or note any such evaluation or follow-up.
 - b. Inappropriately prescribed a high dose of the anti-diabetic medication, Diabenase.
6. On or about February 4 and February 25, 1993, Respondent failed to appropriately evaluate, follow up and/or treat Patient A's diabetes mellitus, or note any such evaluation, follow-up or treatment.
7. On or about October 5, 1993, Respondent inappropriately prescribed Buspar.
8. On or about October 13, 1993, Respondent inappropriately prescribed Ansaid.
9. On or about October 3, 1994, Respondent:
 - a. Failed to adequately evaluate, follow up and/or treat Patient B's noted skin rash, anxiety and persistent sore throat, or note any such evaluation, follow up and/or treatment.
 - b. Inappropriately prescribed Buspar.

- c. Failed to adequately evaluate, follow up and/or treat Patient A's noted right external otitis, which was diagnosed at the prior office visit on or about June 20, 1994, or note any such evaluation, follow-up and/or treatment.
- 10. On or about May 10, 1995, Respondent inappropriately prescribed Cephalexin.
- 11. On or about July 27, 1995, Respondent:
 - a. Failed to adequately evaluate Patient A's left abdominal flank pain, right ovary pain and chest pain, or note any such evaluation.
 - b. Inappropriately prescribed:
 - i. Naprosyn
 - ii. Amoxicillin.
- B. On or about September 29, 1994 and on or about October 27, 1994, Patient B was treated by Respondent.
 - 1. On both office visits, Respondent failed to obtain and/or note an adequate history for Patient B.
 - 2. On both office visits, Respondent failed to perform and/or note an adequate physical examination of Patient B.
 - 3. Respondent inappropriately failed to evaluate, follow up

and/or treat Patient B's noted diabetes mellitus, or note any such evaluation, follow-up and/or treatment.

4. On or about October 27, 1994, Respondent:
 - a. Failed to make and/or note an interim assessment of Patient B's vaginitis, which was diagnosed at the prior office visit on or about September 29, 1994.
 - b. Failed to evaluate, follow up and/or treat, or note any such evaluation, follow-up and/or treatment, of Patient B's abnormal readings from the following tests performed on September 29, 1994:
 - i. fasting blood sugar of 451 mg/dl
 - ii. cholesterol of 298 mg/dl
 - iii. triglycerides of 284 mg/dl.
 - c. Inappropriately prescribed glucotrol and inappropriately advised Patient B to follow a "sugar free and fat free diet."

C. Between in or about April, 1991 and in or about September, 1996, Patient C was treated by Respondent on approximately thirty-seven (37) occasions.

1. Throughout the period, Respondent failed to obtain and/or note an adequate history for Patient C.
2. Throughout the period, Respondent failed to perform

and/or note an adequate physical examination of Patient C.

3. Respondent inappropriately diagnosed Patient C with asthma.
4. Throughout the period, Respondent failed to adequately evaluate, follow up and/or treat Patient C's noted enlarged lymph nodes/mass in right breast, anxiety, chronic dyspepsia, rhinitis, "colic" and migraine headaches, or note any such evaluation, follow-up and/or treatment.
5. Throughout the period, Respondent inappropriately prescribed the following medications for Patient C:
 - a. Decadron
 - b. Fastin
 - c. Buspar
 - d. Fioricet
 - e. Persantine
 - f. Phenergan expectorant with codeine
 - g. Theodur
 - h. Zoloft
 - i. Dexamethasone
 - j. Donnatal
 - k. Relafen
 - l. Lorabid
6. On or about December 18, 1994, Respondent failed to

adequately evaluate Patient C's complaints of shortness of breath, vomiting and/or diarrhea, or note such any such evaluation.

7. On or about April 28, 1995, Respondent:
 - a. Failed to evaluate and/or note any such evaluation of Patient C's response to the following medications:
 - i. Zoloft
 - ii. Donnatal
 - iii. Fioricet.
 - b. Failed to appropriately evaluate and/or follow up on the results of Patient C's April 25, 1995 repeat mammography for the enlarged lymph nodes which were noted on the September, 1994 mammography, or note any such evaluation and/or follow-up.

D. Between in or about May, 1993 and in or about July, 1996, Patient D was treated by Respondent on approximately six (6) occasions.

1. Throughout the period, Respondent failed to obtain and/or note an adequate history for Patient D.
2. Throughout the period, Respondent failed to perform and/or note an adequate physical examination of Patient D.

3. On or about November 29, 1994, Respondent:
 - a. Inappropriately failed to evaluate, follow up and/or treat Patient D for chest pain, despite EKG testing on such date revealing a possible prior myocardial infarction, or note any such evaluation, follow-up and/or treatment.
 - b. Failed to adequately evaluate and/or follow up Patient D's asthma and constipation, or note any such evaluation and/or follow-up.
 - c. Inappropriately prescribed Theodur.

4. On or about December 13 and December 29, 1994, Respondent:
 - a. Inappropriately failed to evaluate, follow up and/or treat Patient D for ongoing chest pain, despite EKG tests performed at the prior office visit on November 29, 1994 indicating a possible prior myocardial infarction, or note any such evaluation, follow-up and/or treatment.
 - b. Inappropriately prescribed:
 - i. Lortab
 - ii. Lorabid
 - iii. Lomotil
 - iv. Levsin.
 - c. Failed to adequately evaluate Patient D's hoarseness, diarrhea and cough, or note any

such evaluation.

5. On or about February 7, 1995, Respondent inappropriately prescribed Theodur.

E. Between in or about January, 1992 and in or about October, 1996, Patient E was treated by Respondent on approximately thirty-one (31) occasions.

1. Throughout the period, Respondent failed to obtain and/or note an adequate history for Patient E.
2. Throughout the period, Respondent failed to perform and/or note an adequate physical examination of Patient E.
3. Throughout the period, Respondent inappropriately diagnosed Patient E with asthma.
4. Throughout the period, Respondent failed to adequately evaluate, follow up and/or treat Patient E's noted anorexia, peptic ulcer disease, hepatomegaly and alcoholic syndrome, or note any such evaluation, follow-up and/or treatment.

F. Between in or about May, 1991 and in or about August, 1996, Patient F was treated by Respondent on approximately fifty-eight (58) occasions.

1. Throughout the period, Respondent failed to obtain and/or note an adequate history for Patient F.
2. Throughout the period, Respondent failed to perform and/or note an adequate physical examination of Patient F.
3. Throughout the period, Respondent inappropriately prescribed non-steroidal anti-inflammatory drugs despite having noted a diagnosis of peptic ulcer disease for Patient F.
4. Throughout the period, Respondent failed to adequately evaluate, follow up and/or treat Patient F's noted skin rash, "possible diabetes", arthritis, and peptic ulcer disease, or note any such evaluation, follow-up and/or treatment.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1999) 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:

1. Paragraphs A and A1 through A11; Paragraphs B and B1 through B4; Paragraphs C and C1 through C7; Paragraphs D and D1 through D5; Paragraphs E

and E1 through E4; and/or Paragraphs F and F1 through F4.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1999) 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:

2. Paragraphs A and A1 through A11; Paragraphs B and B1 through B4; Paragraphs C and C1 through C7; Paragraphs D and D1 through D5; Paragraphs E and E1 through E4; and/or Paragraphs F and F1 through F4.

THIRD THROUGH EIGHTH SPECIFICATIONS

FAILING TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 1999) by failing to maintain a record that accurately reflects the care and treatment of the patient, as alleged in the facts of:

3. Paragraphs A and A1, A2, A5(a), A6, A9(a), A9(c) and A11(a).
4. Paragraphs B and B1, B2, B3, B4(a), and B4(b).
5. Paragraphs C and C1, C2, C4, C6, C7(a) and C7(b).
6. Paragraphs D and D1, D2, D3(a), D3(b), D4(a) and D4(c).

7. Paragraphs E and E1, E2 and E4.
8. Paragraphs F and F1, F2 and F4.

DATED: August , 1999
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is 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].
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. At Respondent's expense, Respondent shall fully participate in, cooperate with and successfully complete a three-part retraining program. The retraining program shall consist of Phase I, screening examinations and evaluations; Phase II, a course of retraining; and Phase III, a post-training follow up period of five years with practice monitoring.

8. Respondent shall obtain a clinical competency assessment performed by a program for such assessment as directed by the Director of OPMC. Respondent shall cause a written report of such assessment to be provided directly to the Director of OPMC within sixty (60) days of the effective date of this Order.
9. Upon completion of Phase I and within four months of the effective date of the Order, Respondent shall be enrolled in a course of personalized continuing medical education, which includes an assigned preceptor, preferably a physician board certified in the same specialty, to be approved, in writing, by the Director of OPMC. Respondent shall remain enrolled and shall fully participate in the program for a period of not less than three months nor more than twelve months.
10. Respondent shall cause the preceptor to
 - a. Submit reports on a quarterly basis to OPMC certifying whether Respondent is fully participating in the personalized continuing medical education program.
 - b. Report immediately to the Director of OPMC if Respondent withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by Respondent.
 - c. At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by Respondent toward remediation of all identified deficiencies.
11. For a period of five years following the effective date of the Order, Respondent shall practice medicine in either private practice, hospitals or other institutional settings outside of the personalized continuing medical education program, 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 cause the practice monitor to monitor Respondent's medical practice in accordance with a monitoring plan to be approved by the Director of OPMC. Such monitoring plan shall include, but not be limited to, provisions for selected medical record reviews, occasional observation of the Respondent in practice settings, required participation in hospital departmental meetings and enrollment in ongoing education courses, if any.
 - b. Respondent shall make available to the practice monitor any and all records or access to the practice requested by the practice 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 10) of records maintained by Respondent, including patient records, prescribing information and office records. The frequency of practice monitoring site visits may be modified at the

discretion of the practice monitor subject to the prior written approval of the Director of OPMC. 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.

- c. Respondent shall cause the practice monitor to report to OPMC on a monthly basis regarding Respondent's compliance with the approved monitoring plan. These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, the monitor's assessment of patient records selected for review, detailed case description of any case found to not meet the established standards of care and Respondent's remediation of previously identified deficiency areas.
 - 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.
12. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.