



New York State Board for Professional Medical Conduct

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

Dennis P. Whalen
Executive Deputy Commissioner of Health
Anne F. Salle, Director
Office of Professional Medical Conduct
William J. Comiskey, Chief Counsel
Bureau of Professional Medical Conduct

William P. Dillon, M.D.
Chair
Denise M. Bolan, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

February 25, 1999

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

John F. Carey, M.D.
1 Hatfield Lane
Goshen, NY 10924

RE: License No. 134672

Dear Dr. Carey:

Enclosed please find Order #BPMC 99-45 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **February 25, 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: Christopher Massaroni, Esq.
DeGraff, Foy, Holt-Harris & Kunz
90 State Street
Albany, NY 12207-1780

Timothy J. Mahar, Esq.

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

CONSENT
AGREEMENT
AND
ORDER
BPMC #99-45

IN THE MATTER
OF
JOHN F. CAREY, M.D.

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

JOHN F. CAREY, M.D., (Respondent) being duly sworn, deposes and says:

That on or about July 1, 1978, I was licensed to practice as a physician in the State of New York, having been issued License No. 134672 by the New York State Education Department.

My current address is 1 Hatfield Lane, Goshen, New York, 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 five specifications of professional misconduct.

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

I plead no contest to paragraphs D.2 and E.3 of the third specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

1. Five years probation in accordance with the terms set forth in Exhibit B hereto.
2. A permanent limitation on my medical license that except in emergencies or where previously authorized in writing by the Director of OPMC, my medical practice shall be limited to my registered address and to hospitals in which I may now or in the future hold medical privileges.

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.

AFFIRMED:
DATED 2/17/99


JOHN F. CAREY, 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: 2/17/99


CHRISTOPHER MASSARONI, Esq.
of Counsel to De Graff, Foy, Holt-Harris &
Kunz
Attorneys for Respondent

DATE: 2/17/99


TIMOTHY J. MAHAR
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 2/19/99


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

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

IN THE MATTER
OF
JOHN F. CAREY, M.D.


CONSENT
ORDER

Upon the proposed agreement of John F. Carey, 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: 2/23/99


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

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

-----X
: AMENDED
IN THE MATTER : STATEMENT
OF : OF
JOHN F. CAREY, M.D. : CHARGES
-----X

John F. Carey, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1978, by the issuance of license number 134672 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A, a female patient then 14 years old, on September 23, 1997 at his office, which, on information and belief, was then located at 1 Hatfield Lane, Goshen, New York.

1. Respondent inappropriately touched Patient A's breast over a bra without a medical justification.
2. Respondent uncovered and exposed Patient A's breast without a medical justification.
3. Respondent failed to maintain a medical record which accurately reflected the evaluation of Patient A on

September 23, 1997.

B. On or about April 25, 1993, Patient B was admitted to the Arden Hill Hospital by Respondent from the hospital's emergency room to rule out a myocardial infarction. Patient B died the following morning without having been evaluated by Respondent or the surgical consultant who had been called with respect to the patient's severe abdominal pain. Respondent's care and treatment of Patient B deviated from accepted standards of medical care in the following respects:

1. Respondent failed to adequately evaluate Patient B.

C. From approximately September 13, 1983 through November 14, 1993, Respondent provided medical care to Patient C at his Harriman Drive office and at the Arden Hill Hospital for hypertension, among other conditions. Respondent's medical care of Patient C deviated from accepted standards of medical care in the following respects:

1. Respondent failed to develop a follow-up plan in response to the results of the Holter Monitor study of Patient C performed on October 22, 1990.
2. Respondent failed to further evaluate abnormal glucose levels for Patient C recorded in May, 1992.
3. Respondent failed on various occasions to adequately

evaluate Patient C by history and/or physical examination and/or maintain a record which accurately reflected the evaluation of Patient C.

D. From approximately April 11, 1990 through May 15, 1992, Respondent treated Patient D at his Harriman Drive office and the Arden Hill Hospital for an intestinal obstruction, among other conditions. Respondent's medical care of Patient D deviated from accepted standards of medical care in the following respects.

1. Respondent failed to adequately evaluate Patient D on October 8, 1991 by history and/or physical examination for a recorded complaint of a "knot" in the stomach.
2. Respondent failed to maintain a medical record which accurately reflected the evaluation and/or treatment of Patient D.

E. From approximately December 8, 1992 through January 5, 1993, Respondent provided medical care to Patient E at his Harriman Drive office and the Arden Hill Hospital for abdominal pain, among other conditions. Respondent's medical care of Patient E deviated from accepted standards of medical care in the following respects:

1. Respondent on December 8, 1992 failed to adequately evaluate by history and/or physical examination

Patient E's complaints of abdominal pain.

2. Respondent failed to make or record a differential diagnosis and/or follow-up plan for Patient E on December 8, 1992.
3. Respondent failed to maintain a record which accurately reflected the evaluation of Patient E.

SPECIFICATIONS

FIRST SPECIFICATION

WILLFUL PHYSICAL ABUSE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(31) by reason of his having willfully harassed, abused, or intimidated a patient physically, in that Petitioner charges:

1. The facts in Paragraphs A and A.1 and/or A and A.2.

SECOND SPECIFICATION

MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(20) by reason of his having engaged in conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

2. The facts in Paragraphs A and A.1 and/or A and A.2.

THIRD SPECIFICATION

Negligence On More Than One Occasion

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530 (3) by reason of his practicing the profession of medicine with negligence on more than one occasion; in that Petitioner charges that Respondent committed two or more of the following:

3. The facts in Paragraphs A and A.1, and/or A and A.2, and/or A and A.3, and/or B and B.1, and/or C and C.1, and/or C and C.2, and/or C and C.3, and/or D and D.1 and/or D and D.2, and/or, E and E.1 and/or E and E.2, and/or E and E.3.

FOURTH SPECIFICATION

Incompetence On More Than One Occasion

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530 (5) by reason of his practicing the profession of medicine with incompetence on more than one occasion, in that Petitioner charges that Respondent committed two or more of the following:

4. The facts in Paragraphs A and A.1, and/or A and A.2, and/or A and A.3, and/or B and B.1, and/or C and C.1, and/or C and C.2, and/or C and C.3, and/or D and D.1, and/or D and D.2, and/or E and E.1, and/or E and E.2, and/or E and E.3.

FIFTH SPECIFICATION

Inadequate Records

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530 (32) by reason of his failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges:

5. The facts in Paragraphs A and A.3, and/or C and C.3, and/or D and D.2, and/or E and E.2, and/or E and E.3.

DATED: *February 17*, 1999
Albany, New York

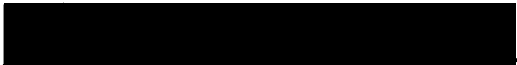

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his 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. 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.

8. 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 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 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 shall, in the course of practicing medicine in New York State, examine and/ treat any female patient only in the presence of a chaperon. The chaperon shall be a female licensed or registered health care professional or other health care worker, shall not be a family member, personal friend, or be in a professional relationship with Respondent which could pose a conflict with the chaperon's responsibilities. The chaperon shall be proposed by Respondent and subject to the written approval of the Director of OPMC.
10. Prior to the approval of any individual as chaperon, Respondent shall cause the proposed chaperon to execute and submit to the Director of OPMC an acknowledgment of her agreement to undertake all of the responsibilities of the role of chaperon. Said acknowledgment shall be made upon a form provided by and acceptable to the Director. Respondent shall provide the chaperon with a copy of the Order and all of its attachments and shall, without fail, cause the approved chaperon to:
 - a. Report quarterly to OPMC regarding her chaperoning of Respondent's practice.
 - b. Report within 24 hours any failure of Respondent to comply with the Order, including, but not limited to, any failure by Respondent to have the chaperon present when required, any sexually suggestive or otherwise inappropriate comments by Respondent to any patient, and any actions of a sexual nature by Respondent in the presence of any patient.
 - c. Confirm the chaperon's presence at each and every examination and treatment of a female patient by Respondent, by placing her name, title and date in the patient record for each and every visit, and by maintaining

a separate log, kept in her own possession, listing the patient name and date of visit for each and every patient visit chaperoned.

- d. Provide copies of the log described in paragraph c, above, to OPMC at least quarterly and also immediately upon the Director's request.
11. For the examination and/or treatment of female patients in the hospital as their attending physician, Respondent shall conduct such examinations and provide such treatment in the presence of a female nurse who shall cosign the hospital chart for the examination and/or treatment performed.