

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

IN THE MATTER
OF
Felix Gelman, M.D.

CONSENT
ORDER

BPMC No. #08-203

Upon the application of (Respondent) Felix Gelman, M.D. 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 Consent 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.

DATE: 10-13-2008

Redacted Signature

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
Felix Gelman, M.D.**

CONSENT
AGREEMENT
AND
ORDER

Felix Gelman, M.D., representing that all of the following statements are true, deposes and says:

That on or about June 30, 1995, I was licensed to practice as a physician in the State of New York, and issued License No. 199904 by the New York State Education Department.

My current address is Redacted Address, 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 (Board) has charged me with 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 assert that I cannot successfully defend against at least one act of misconduct alleged against me, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.

Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of \$20,000, to be paid in full within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1245
Albany, New York 12237

Pursuant to N.Y. Pub. Health Law § 230, for a period of three years, I shall be subject to the conditions contained in Exhibit "B", attached.

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

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the Consent

Order's effective date and will continue so long as Respondent remains a licensee 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 Consent 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 Consent 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 Consent Order shall constitute misconduct as defined by N.Y. Educ. 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 N.Y. Pub. 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 Consent 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 Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. 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 I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of

OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 11/16/08

Redacted Signature


Felix Gelman, M.D.
Respondent

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

DATE: 9/16/08

Redacted Signature

Amy Kubb, Esq.
Attorney for Respondent

DATE: 9/23/08

Redacted Signature

Courtney Berry
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 10/10/08

Redacted Signature

Keith W. Servis
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
Felix Gelman, M.D.

STATEMENT
OF
CHARGES

Felix Gelman, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 30, 1995, by the issuance of license number 199904 by the New York State Education Department. Respondent treated the patients, referred to below by letter(s), at his medical office(s) located at Brooklyn, N.Y.. Each of these patients is a "No-Fault" insurance patient and is identified in Appendix A, attached.

FACTUAL ALLEGATIONS

- A. Between on or about June 1, 2000 and on or about July 31, 2001, Respondent treated Patients A-D at Respondent's medical office in Brooklyn, N.Y. Respondent:
1. Inappropriately submitted claims for reimbursement from insurance companies for paravertebral nerve blocks.
 2. Failed to maintain a record that accurately reflected the care and treatment of each patient.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS


FAILING TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in

N.Y. Educ. Law § 6530(32) by failing to maintain a record that accurately reflects the care and treatment of the patient, as alleged in the facts of:

1. Paragraphs A, A1, and A2.

DATE: October ³, 2008
New York, New York


Redacted Signature

Rby Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Conditions

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 N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of this condition and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(10).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, 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 this 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, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
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 fine is payable in full within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1245
Albany, New York 12237
6. 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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32]. Failure to pay the fine shall be construed as a violation of this condition.
7. The period of conditions shall toll when Respondent is not engaged in active medical practice in New York State for a period of 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 30 day period. Respondent

shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the conditions shall resume and Respondent shall fulfill any unfulfilled conditions and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

8. 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, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
9. 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.
10. Respondent shall enroll in and complete continuing education programs in the areas of recordkeeping and ethics. These continuing education programs are subject to the Director of OPMC's prior written approval and shall be completed within 3 months of the effective date of this Order.

BILLING MONITOR

11. Respondent shall make available for review by a third party billing monitor any and all office and accounts records, as directed by OPMC. Such billing monitor shall be proposed by Respondent and approved, in writing, by the Director, OPMC. Respondent shall fully cooperate in the review process. The review will determine whether the Respondent's medical billing and related documentation practices are conducted in a manner that complies with all federal, state, and local statutes and regulations regarding billing for medical services and is accurate, under all relevant circumstances, as to services rendered and the clinical bases for those services.
 - a. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the billing monitor.
 - b. Respondent shall cause the billing monitor to report quarterly, in writing, to the Director of OPMC.
 - c. Any perceived deviation from proper billing practices or refusal to cooperate with the billing monitor shall be reported within 24 hours to OPMC.
12. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these conditions, the Director of OPMC and/or the Board may initiate any proceeding authorized by law, against Respondent.