



Public
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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Katherine A. Hawkins, M.D., J.D.
Executive Secretary

January 20, 2010

CERTIFIED MAIL-RECEIPT REQUESTED

Mark Swetz, M.D.

Redacted Address

Re: License #194104

Dear Dr. Swetz:

Enclosed is a copy of your Non-disciplinary Order of Conditions pursuant to Public Health Law Section 230. The order is effective January 27, 2010.

Sincerely,

Redacted Signature

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Michael Roach, Esq.
Connors & Vilaro
1000 Liberty Bldg.
424 Main Street
Buffalo, NY 12211

IN THE MATTER
OF
MARK SWETZ, M.D.

NONDISCIPLINARY
ORDER
OF CONDITIONS
PURSUANT TO
N.Y. PUB. HEALTH
LAW § 230

Upon the application of Mark Swetz, M.D. (Licensee) in the attached Stipulation and Application for an Order of Conditions, pursuant to N.Y. Pub. Health Law § 230 (Application), which is made a part of this Nondisciplinary Order of Conditions, pursuant to N.Y. Pub. Health Law § 230 (Order); it is agreed that:

- the Application and its terms are adopted; and
- this Order shall be effective upon issuance by the Board, either by mailing of a copy of this Order by first class mail to Licensee at the address in the attached Application or by certified mail to Licensee's attorney, or upon facsimile transmission to Licensee or Licensee's attorney, whichever is first.

SO ORDERED.

DATED: 1-19-2010

Redacted Signature

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional Medical Conduct

**IN THE MATTER
OF
MARK SWETZ, M.D.**

STIPULATION AND
APPLICATION
FOR A
NONDISCIPLINARY
ORDER OF
CONDITIONS
PURSUANT TO
N.Y. PUB. HEALTH
LAW § 230

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

That on or about the 29th day of October, 1993, I was licensed to practice as a physician in the State of New York and issued License No. 194104 by the New York State Education Department.

My current address is Redacted Address

I am affiliated with the following hospitals and/or facilities: Mercy Hospital, Buffalo, New York.

I understand that the New York State Board for Professional Medical Conduct ("the Board") has investigated the issues set forth in attached Exhibit A.

I request that the Board and the Director of the Office of Professional Medical Conduct ("the Director"), in reliance upon the results of the investigation to date and upon my representation that I have practiced medicine without incident for at least a year before this Application, conclude the investigation of these issues, provided I successfully and without incident comply with the Conditions set forth below. In consideration of the Board and the Director granting this Application, and upon the Board's election not to bring disciplinary charges against me, I agree that the Board and the Director shall issue a *Nondisciplinary* Order of Conditions, pursuant to N.Y. Pub. Health Law § 230. This Order shall remain in effect for three years from the effective date of this Order. After the conditions and this Stipulation and Application have been fully complied with for two years, I may at that time apply to the Director of the Office of Professional Medical Conduct ("OPMC") for termination of the three year period set forth in this Stipulation and Application, although I understand that the Director of OPMC shall have full discretion to act on such application as the Director of OPMC deems appropriate. This Order shall set the following *Conditions* upon my practice:

1. Licensee's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by

Licensee as defined in N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of this Order and may subject Licensee to an action, pursuant to N.Y. Pub. Health Law § 230.

2. Licensee 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. Licensee shall not exercise the option provided in § 6502(4) to avoid registration and payment of fees. This condition shall take effect thirty (30) days after the Order's effective date and shall continue until the full term of the Order has run, and until any associated period of conditions and all terms and conditions have been completed and satisfied. My failure to comply with this condition, if proven and found at a hearing, pursuant to N. Y. Pub. Health Law § 230(10), shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(29).
3. Licensee 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 Licensee'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. Licensee shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Licensee shall cooperate fully with the Office of Professional Medical Conduct ("OPMC") in its administration and enforcement of this Order and in its investigation of Licensee. Licensee shall respond in a timely manner to all OPMC requests for written periodic verification of compliance with the terms of this Order, meet in person with the Director's designee, and respond promptly and provide all documents and information within Licensee's control to OPMC, as directed. This Condition shall take effect upon the effective date of the Order and will continue while Licensee possesses a license.
5. Licensee shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients.

6. The Director may review Licensee'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 or periodic visits with Licensee and staff at practice locations or OPMC offices.
7. Licensee shall provide access for DOH personnel to Licensee's office(s) to verify Licensee's compliance with this Order. This access shall include, but not be limited to, on-site inspections, observation and interviews.
8. Within thirty days of the effective date of the Order, Licensee shall practice medicine only when monitored by a licensed physician, board-certified in an appropriate specialty ("practice monitor"), proposed by Licensee and subject to the written approval of the Director.
 - a. Licensee shall make available to the practice monitor all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Licensee's medical practice at every location on a random unannounced basis at least monthly and shall examine a selection of records (no fewer than twenty) maintained by Licensee, including patient records, prescribing information and office records, to determine whether the Licensee's medical practice is conducted in accordance with generally accepted standards of professional medical care. The practice monitor shall report to OPMC within 24 hours of any perceived deviation by Licensee from accepted standards of medical care or any refusal by Licensee to cooperate with the monitoring.
 - b. Licensee shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Licensee shall cause the practice monitor to report quarterly, in writing, to the Director.
 - d. Licensee shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year in accordance with Public Health Law § 230(18)(b). Licensee shall provide the Director with proof of such coverage before Licensee may practice medicine after the effective date of this Order.

CONTINUING MEDICAL EDUCATION

9. Respondent, during the three years that this Order is in effect, is required to complete a total of 100 hours of Category I Continuing Medical Education (CME), in the area of primary care medicine, including, but not limited to, otolaryngology in primary care. All CME courses are subject to the prior written approval of OPMC. Said 100 hours of CME shall be in addition to any other CME that Respondent is required to complete to maintain licensure in any jurisdiction, privileges in any facility, or Board certification.
10. The period of Conditions shall toll when Licensee is not engaged in active medical practice in New York State for 30 consecutive days or more. Licensee shall notify the Director, in writing, if Licensee is not currently engaged in or intends to leave active medical practice in New York State for 30 consecutive days or more and Licensee shall then notify the Director again at least 90 days before returning to active medical practice in New York State. Upon Licensee's return to active medical practice in New York State, the period of Conditions shall resume and Licensee shall fulfill any unfulfilled terms 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.
11. Licensee shall comply with this Order, and all its terms and Conditions, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or violation of these terms, the Director and/or the Board may initiate a proceeding against Licensee under N.Y. Pub. Health Law § 230.

I stipulate that my failure to comply with these conditions shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I understand that nothing in this Application shall be construed as an admission by me of any act of alleged misconduct or as a finding of misconduct as to those issues referred to in Exhibit A. I deny any acts of misconduct and reserve my right to assert all defenses I may have in any later or other proceeding.

I understand and agree that my failure to comply with, successfully complete, or satisfy any of the material conditions of this Order, and/or any unsatisfactory report by the practice monitor, shall vest the Director with the authority, in the exercise of reasonable discretion, to vacate this agreement and shall permit the Director to pursue further investigation and/or prosecution of misconduct charges against me as to the issues set forth in Exhibit A to the full extent authorized by the Public Health Law and the Education Law.

I understand that an Order issued upon this Application does not bar prosecution for professional misconduct based upon allegations of violations of N.Y. Educ. Law § 6530 unrelated to the issues set forth in Exhibit A, whether those alleged violations occurred before or after this Application. The Director may, at such time, also direct counsel to prepare charges that include allegations as to the issues set forth in Exhibit A.

I agree that if the Board grants this Application, an Order of the Chair of the Board shall issue in accordance with its terms. I further agree that the Department will notify the National Practitioner Data Bank, the Federation of State Medical Boards, all managed care organizations in New York State, all facilities with which Licensee is or has been affiliated, and place notice on the Department of Health website(s), of the existence of this Order of Conditions pursuant to N.Y. Pub. Health Law § 230 with , and that the change in Licensee's licensure status is not disciplinary in nature.

I make this Application of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Application, I waive my right to contest the Order for which I apply, whether administratively or judicially, I agree to be bound by the Order, and I ask that the Board grant this Application.

I understand and agree that the attorney for the Department of Health, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and 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.

DATED: 12/30/09

Redacted Signature

MARK SWETZ, M.D.
Licensee

STIPULATION AND
APPLICATION
FOR A
NONDISCIPLINARY
ORDER
OF CONDITIONS
PURSUANT TO
N.Y. PUB. HEALTH LAW
§ 230

IN THE MATTER
OF
MARK SWETZ, M.D.

The undersigned agree to Licensee's attached Application and to the issuance of the proposed Nondisciplinary Order of Conditions Pursuant to N.Y. Pub. Health Law § 230.

CONNORS & VILARDO. LLP

DATED: _____

Redacted Signature
BY:
MICHAEL J. ROACH, ESQ.
Attorney for Licensee

DATED: January 5, 2010

Redacted Signature
CINDY M. FASCIA, ESQ.
ASSOCIATE COUNSEL
Bureau of Professional Medical Conduct

DATED: 1/12/10

Redacted Signature
KEITH W. SERVIS
Director
Office of Professional Medical Conduct