



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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NYS Department of Health
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Office of Professional Medical Conduct

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Chair
Carmela Torrelli
Vice Chair
Katherine A. Hawkins, M.D., J.D.
Executive Secretary

September 21, 2009

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

David J. Findlay, M.D.
Redacted Address

RE: License No. 195579

Dear Dr. Findlay:

Enclosed is a copy of Order BPMC #09-175 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect September 28, 2009.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1717
Empire State Plaza
Albany, New York 12237

Sincerely,

Redacted Signature

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

cc: Robert D. Simpson, Esq.
Leichter Law Firm
1602 East 7th Street
Austin, TX 78702

IN THE MATTER
OF
DAVID J. FINDLAY, M.D.

CONSENT
ORDER
BPMC NO. #09-175

Upon the application of **DAVID J. FINDLAY, M.D.**, (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 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.

DATED: 9-18-2009

Redacted Signature

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

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

IN THE MATTER
OF
DAVID J. FINDLAY, M.D.
CO-08-09-5663-A

CONSENT
AGREEMENT
AND ORDER

DAVID J. FINDLAY, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about May 3, 1994, I was licensed to practice medicine as a physician in the State of New York, and issued license number 195579 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 my address thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with two (2) Specifications of professional misconduct, based solely on the June 27, 2008, Texas Medical Board, Agreed Order.

A copy of the Statement of Charges, marked as Exhibit "A," is attached to and part of this Consent Agreement.

I do not contest Factual Allegations A, B(1), and B(4) and the Second Specification, in full satisfaction of the charges against me, and agree to the following penalty:

Censure and Reprimand; and a
\$1,000.00 fine.

The fine is to be paid within thirty (30) days of the effective date of this Order to the NYS Department of Health, Bureau of Accounts Management, Revenue Unit, Empire State Plaza, Corning Tower, Room 1717, Albany, NY 12237-0016.

Respondent shall comply fully with the June 27, 2008, Texas Medical Board, Agreed Order, and any extension or modification thereof.

Respondent shall provide a written authorization for the Texas Board to provide the Director of OPMC with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Texas Order.

Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether Respondent has been in compliance with the Texas Order during the declaration period specified.

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

That Respondent shall remain in continuous compliance with all requirements of New York Education 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 New York Education 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 New York 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 New York 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 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 New York Public 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.

AFFIRMED:

DATED: 9/14/09

Redacted Signature

DAVID J. FINDLAY, M.D.
Respondent

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

DATE: 09-16-2009

Redacted Signature

ROBERT B SIMPSON
Attorney for Respondent

DATE: 17 September 2009

Redacted Signature

ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 9/18/09

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
DAVID J. FINDLAY, M.D.
CO-08-09-5663-A

STATEMENT
OF
CHARGES

DAVID J. FINDLAY, M.D., Respondent, was authorized to practice medicine in New York state on May 3, 1994, by the issuance of license number 195579 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 27, 2008, the Texas Medical Board (hereinafter "Texas Board"), by an Agreed Order (hereinafter "Texas Order"), inter alia, subjected Respondent's practice of medicine to two (2) years monitoring, based on Respondent's failing to practice medicine in an acceptable professional manner consistent with public health and welfare, failing to meet the generally accepted standard of care and failing to exercise diligence in one's professional practice; prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner the drug or treatment is administered or prescribed; writing prescriptions for or dispensing to a person who is known to be an abuser of narcotic drugs, or to a person whom the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs; and failing to maintain adequate medical records.

B. The conduct resulting in the Texas Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6530(5) (incompetence on more than one occasion);
4. New York Education Law §6530(6) (gross incompetence); and/or

5. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

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

DATED: *July 29*, 2009
Albany, New York

Redacted Signature

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