

September 28, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Joseph R. Gaudio, M.D.

REDACTED

RE: License No. 203764

Dear Dr. Gaudio:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 11-236. This Order and any penalty provided therein goes into effect October 5, 2011.

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

Please direct responses to: Board for Professional Medical Conduct, 433 River Street, Suite 303, Troy, NY 12180, telephone # (518) 402-0855.

Sincerely,

REDACTED

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

cc: Barry E. Warner, Esq.
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299

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

IN THE MATTER
OF
JOSEPH R. GAUDIO, M.D.

CONSENT
ORDER

BPMC No. 11-236

Upon the application of JOSEPH R. GAUDIO, M.D., (Respondent), in the attached Consent Agreement, 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 or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 9/28/11

REDACTED

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
JOSEPH R. GAUDIO, M.D.
CO-09-07-4300-A

CONSENT
AGREEMENT

JOSEPH R. GAUDIO, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about July 11, 1996, I was authorized to practice medicine in the State of New York, and issued license number 203764 by the New York State Education Department.

My current address is REDACTED, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address within 30 days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with 3 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 do not contest the 3 Specifications and agree to the following penalty:

My license to practice medicine in New York State shall be suspended for 24 months retroactive to December 1, 2009, with the first 3 months to be served as a period of actual suspension and 21 months of the period to be stayed.

I shall be prohibited from prescribing controlled substances for 42 months retroactive to April 8, 2009. Nothing herein, however, shall be construed to prohibit me from administering a controlled substance to a patient in a "hospital" as defined in Public Health Law § 2801(1) or in the context of "office-based surgery" within the meaning of Public Health Law § 230-d.

I shall only prescribe, or otherwise authorize a pharmacy to dispense, prescription drugs, controlled or non-controlled, for a patient with whom I have a qualifying medical relationship and for whom a record is duly maintained which accurately reflects the evaluation and treatment of that patient. For purposes of this Consent Agreement and Order, a qualifying medical relationship shall mean that I shall have conducted at least one in-person medical evaluation of the patient. An in-person medical evaluation shall mean that I shall have conducted the evaluation in the physical presence of the patient, without regard to whether other portions of the evaluation are conducted by other health professionals.

I shall pay a \$12,000.00 fine, payable in 12 monthly installments of \$1,000.00, to the New York State Department of Health, Bureau of Accounts Management, Revenue Unit, Empire State Plaza, Corning Tower, Room 1717, Albany, NY 12237-0016. The first payment is due one month from the effective date of this Consent Agreement and Order. I may also prepay the entire fine or any remaining balance at any time. Failure to pay any monetary penalty by the prescribed date shall subject me 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; non-renewal of permits or licenses [Tax Law Section 171(27)]; State Finance Law Section 18; CPLR Section 5001; Executive Law Section 32. In addition, if I fail to make a monthly payment within fifteen days of the date on which it is due, I will be deemed to have defaulted. If a default occurs, the entire amount of the fine that remains payable in monthly installments shall immediately be due in full at the sole option of the Director of OPMC.

I shall comply fully with the April 8, 2009 U.S. Drug Enforcement Administration "Suspension of Registration," described in paragraph A of the Statement of Charges (Ex. A), and any related extensions, modifications, or registration reinstatements.

I shall comply fully with the October 19, 2009 New Jersey "Final Consent Order," described in paragraph A of the Statement of Charges (Ex. A), and any related extensions, modifications, or license reinstatements.

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 effective date of the Consent Order and will continue so long as Respondent remains a licensee in New York State;

and

That Respondent shall cooperate fully with the OPMC in its administration and enforcement of the Consent Order and in its investigation 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 Agreement. Respondent shall meet with a person designated by the Director, OPMC, as directed. Respondent shall respond promptly and provide OPMC with all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Agreement and 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 State Education Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and the Consent Order, and/or related Modification Orders, 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 the 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

A handwritten signature in black ink, appearing to be 'my' followed by a stylized flourish.

effect upon 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 or email transmission to me or my attorney, whichever is first. This Consent Order, this Consent 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 of Health 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 for Professional Medical Conduct and the Office of Professional Medical Conduct 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, OPMC, and the Chair of the Board each retain complete discretion either to enter into the proposed Consent 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: 9/8/11

REDACTED

JOSEPH R. GAUDIO, M.D.
Respondent

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

DATE: 7.8.11

REDACTED

BARRY E. WARNER
Attorney for Respondent

DATE: 9/9/11

REDACTED

RICHARD J. ZAHNLEUTER
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 9/26/2011

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

Handwritten signature

EXHIBIT A

Orly

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

IN THE MATTER
OF
JOSEPH R. GAUDIO, M.D.
CO-09-07-4300-A

STATEMENT
OF
CHARGES

JOSEPH R. GAUDIO, M.D., Respondent, was authorized to practice medicine in New York State on July 11, 1996, by the issuance of license number 203764 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 8, 2009, the U.S. Drug Enforcement Administration ("DEA"), by a "Suspension of Registration" (hereinafter "DEA Order"), suspended Respondent's DEA registration for 1 year and ordered that Respondent submit "a sworn statement acknowledging that his internet prescribing activities violated the Controlled Substances Act and DEA regulations," based on Respondent having entered into a contract with an internet company to review "on-line patient applications" for drugs and to determine whether to issue prescriptions to those persons who ordered drugs through the internet site, and Respondent accordingly having issued prescriptions for controlled and non-controlled substances between approximately December 2004 and December 2005 at a rate of 20 to 30 per week (except for 3 vacation weeks), totaling between 800 and 1,200 prescriptions, without a "legitimate medical purpose" and not "in the usual course of his professional practice."

B. On or about October 19, 2009, the New Jersey State Board of Medical Examiners (hereinafter "New Jersey Board"), by a "Final Consent Order" (hereinafter "New Jersey Order"), suspended Respondent's license for 2 years beginning November 1, 2009 and with the first 3 months of the suspension being active and the remainder stayed and served as a period of probation, assessed Respondent \$5,000.00 in civil penalties and \$6,500.02 in investigative costs and attorney's fees, and ordered that Respondent, prior to reinstatement from the active suspension, successfully complete an ethics course and a controlled dangerous substances prescribing course, based on Respondent, from 2004 to 2005, having been "affiliated with an internet pharmacy operation and [having] electronically authorized



prescriptions for drugs, including controlled dangerous substances... to patients over the internet for whom he performed no physical examination and for whom he kept inadequate records of treatment," and having "failed to disclose the fact of the [DEA] investigation and subsequent 2006 DEA administrative proceedings to the Board and the New Jersey Drug Control Unit when required to do so on his license renewal forms," which 2006 DEA hearing resulted in the DEA Order referred to in paragraph A herein.

C. The conduct resulting in the DEA Order and the New Jersey Order 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) (practicing the profession with negligence on more than one occasion);
2. New York Education Law §6530(4) (practicing the profession with gross negligence on a particular occasion);
3. New York Education Law §6530(5) (practicing the profession with incompetence on more than one occasion);
4. New York Education Law §6530(6) (practicing the profession with gross incompetence); and/or
5. New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of federal or state laws, rules, or regulations governing the practice of medicine, including, 10 NYCRR 80.63(c), 10 NYCRR 910.2(f), Public Health Law §3332(1), Public Health Law §3331(2), and the Federal Controlled Substances Act, including 21 USC 829, and 21 CFR 1306.04).

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(c) by having been found guilty, in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to this section, in that Petitioner charges:

1. The facts in Paragraphs A, C, C(1), C(2), C(3), C(4), and/or C(5).

SECOND 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:

2. The facts in Paragraphs B, C, C(1), C(2), C(3), C(4), and/or C(5).

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having her license to practice medicine revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws New York State, in that Petitioner charges:

3. The facts in Paragraphs B, C, C(1), C(2), C(3), C(4), and/or C(5).

DATED: *January 21*, 2011
Albany, New York

REDACTED

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