



***New York State Board for Professional Medical Conduct***

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

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner of Health*

Patrick F. Carone, M.D., M.P.H.  
*Chair*  
Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

November 4, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jose Gonzalez Acuna, M.D.  
116 Weldon Way  
Pennington, New Jersey 08534-1829

RE: License No. 190863

Dear Dr. Acuna:

Enclosed please find Order #BPMC 97-261 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

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.

Board for Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place, Suite 303  
433 River Street  
Troy, New York 12180

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 1315  
Empire State Plaza  
Albany, New York 12237

Sincerely,

A handwritten signature in black ink, appearing to read "Ansel R. Marks". The signature is fluid and cursive, with a large initial "A" and "M".

Ansel R. Marks, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Margaret Somerset, Esq.  
Harris, Beach & Wilcox  
The Granite Building  
130 East Main Street  
Rochester, New York 14604-1687

Cindy M. Fascia, Esq.

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

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IN THE MATTER : CONSENT  
OF : AGREEMENT  
JOSE GONZALEZ ACUNA, M.D. : AND ORDER  
: BPMC # 97-261

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JOSE GONZALEZ ACUNA, M.D., says:

On or about December 17, 1992, I was licensed to practice as a physician in the State of New York, having been issued license number 190863 by the New York State Education Department.

I understand that I have been charged with four specifications of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit A.

I do not contest the charges against me.

I hereby agree to the following penalties:

- 1) A Censure and Reprimand.
- 2) A probationary period of five years, during which I must fully comply with the Terms of Probation attached hereto as Exhibit B.

3) A civil penalty in the amount of five thousand dollars (\$5,000), which must be paid in full within ninety days (90) of the effective date of this Consent Order. Payment must be made to the Bureau of Accounts Management, New York State Department of Health, Empire State Plaza, Corning Tower, 17th Floor, Albany, New York, 12237. I understand that if I do not pay said civil penalty in full by the required date, I shall be subject to all provisions of law relating to debt collection by the State of New York, and all such other penalties or procedures as are authorized under New York State Law, 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 the denial of applications to renew my registration to practice medicine with the New York State Education Department. I further understand that if I do not pay said civil penalty in full by the required date, my failure to do so will be considered professional misconduct under N.Y. Education Law §6530(29), and I will be subject to prosecution accordingly.

I agree that in the event that I am charged with professional misconduct and/or a violation of the terms of my probation in the future, this agreement and order, including Exhibits A and B, shall be admitted into evidence in any such misconduct or violation of probation proceeding.

I agree that, as a condition of this Order, I will maintain current registration of my license with the New York State Education Department, Division of Professional Licensing Services, and pay all registration fees. This condition will

remain in effect except during periods of actual suspension, if any, imposed by this Order. This condition shall be in effect beginning thirty days after the effective date of this Order and will continue until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I understand that any failure by me to comply with this condition shall constitute misconduct as defined by New York State Education Law §6530(29).

I understand that, in the event that the Board does not grant this application, 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 State Board for Professional Medical Conduct grants my application, an order of the Chairperson of the Board shall be issued in accordance with same.

I make this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.

JOSE GONZALEZ ACUNA, M.D.  
RESPONDENT

Subscribed before me this

6th day of October, 1997.

Linda A. Guthbert  
NOTARY PUBLIC  
LINDA A. GUTHBERT  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Aug. 25, 2002

AGREED TO:

DATE: October 7, 1997

Margaret Somerset  
MARGARET SOMERSET, ESQ.  
Attorney for Respondent

DATE: October 9, 1997

Cindy M. Fascia  
CINDY M. FASCIA  
ASSOCIATE COUNSEL  
Bureau of Professional  
Medical Conduct

DATE: October 20, 1997

Anne F. Saile  
ANNE F. SAILE  
DIRECTOR  
Office of Professional  
Medical Conduct

ORDER

Upon the proposed agreement of JOSE GONZALEZ ACUNA, M.D. (Respondent) for Consent Order, which proposed agreement is made a part hereof, it is AGREED TO and

ORDERED, that the proposed agreement and the provisions thereof are hereby adopted; and it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order by certified mail, whichever is earliest.

DATED: 10/23/97



PATRICK F. CARONE, M.D., M.P.H.  
Chair  
State Board for Professional  
Medical Conduct

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

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IN THE MATTER : STATEMENT  
OF : OF  
JOSE GONZALEZ ACUNA, M.D. : CHARGES

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JOSE GONZALEZ ACUNA, M.D., the Respondent, was authorized to practice medicine in New York State on December 17, 1992 by the issuance of license number 190863 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine through November 30, 1997, with a registration address of 138 Church Street, Alexandria Bay, New York 13607.

**FACTUAL ALLEGATIONS**

A. Respondent provided medical treatment to Patient A [Patients are identified in Appendix] from on or about September 15, 1994 through on or about September 27, 1994 at the Alexandria Bay Health Center [hereafter "Respondent's office"].

1. Respondent hugged Patient A during an appointment for medical care on or about September 15, 1994.

2. Respondent, after the above appointment and after Patient A's appointment with a counselor at the

Alexandria Bay Health Center on or about September 15, 1994, hugged Patient A again.

3. Respondent, on or about September 20, 1994, telephoned Patient A at her home and asked her to come to his office that day to discuss test results. Respondent, when Patient A came to his office to discuss the test results on or about September 20, 1994, engaged in the following conduct:
  - a. Respondent held Patient A's hands.
  - b. Respondent hugged Patient A.
  
4. Respondent, subsequent to the above office visit on or about September 20, 1994, spoke to Patient A on the telephone later that day. After Patient A told Respondent that she had been nervous in his office because she was uncomfortable being touched, Respondent told Patient A that "it sounded like he and she needed to spend a lot more time together," or words to such effect.
  
5. Respondent, during an appointment for medical care in Respondent's office on or about September 27, 1994, engaged in the following conduct:
  - a. Respondent hugged Patient A.
  - b. Respondent held Patient A's face and kissed her on the mouth and/or tried to put his tongue in her mouth.

- c. Respondent, after kissing Patient A, told her "That was a real kiss. I just thought you would like to know the difference" or words to such effect.
  
- 6. Respondent made an entry in Patient A's medical record regarding the September 27, 1994 office visit to the effect that Patient A had requested a hug and that Respondent had denied the request when, in fact, Respondent had hugged and/or kissed Patient A and had initiated such conduct during the office visit, and Respondent knew such facts.
  
- 7. Respondent, following his telephone conversation with Patient A on or about November 16, 1994, made an entry in Patient A's medical record regarding the telephone conversation which did not accurately reflect the telephone conversation, and Respondent knew such facts.

**SPECIFICATION OF CHARGES**

FIRST SPECIFICATION

MORAL UNFITNESS

Respondent is charged with professional misconduct by reason of his committing conduct in the practice of medicine which evidences moral unfitness to practice medicine in violation of New York Education Law § 6530(20) (McKinney's Supp. 1997), in that Petitioner charges:

1. The facts in Paragraphs A and A.1 and/or A.2 and/or A.3(a) and/or A.3(b) and/or A.4 and/or A.5(a) and/or A.5(b) and/or A.5(c) and/or A.6 and/or A.7.

SECOND SPECIFICATION

PHYSICALLY OR VERBALLY  
HARASSING, ABUSING OR INTIMIDATING  
A PATIENT

Respondent is charged with professional misconduct by reason of his willfully harassing, abusing or intimidating a patient either physically or verbally, in violation of New York Education Law § 6530(31) (McKinney's Supp. 1997), in that Petitioner charges:

2. The facts in Paragraphs A and A.1 and/or A.2 and/or A.3(a) and/or A.3(b) and/or A.4 and/or A.5(a) and/or A.5(b) and/or A.5(c) and/or A.6 and/or A.7.

THIRD SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with professional misconduct by reason of his practicing medicine fraudulently in violation of New York Education Law § 6530(2) (McKinney's Supp. 1997), in that Petitioner charges:

3. The facts in Paragraphs A.6 and/or A.7.

FOURTH SPECIFICATION

FAILURE TO MAINTAIN ACCURATE RECORDS

Respondent is charged with professional misconduct by reason of his failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient in violation of New York Education Law § 6530(32) (McKinney's Supp. 1997), in that Petitioner charges:

4. The facts in Paragraphs A.6 and/or A.7.

DATED: *October 9*, 1997  
Albany, New York

*Peter D. Van Buren*

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

EXHIBIT B

TERMS OF PROBATION

JOSE GONZALEZ ACUNA, M.D.

1. Respondent will conform fully:
  - a. to the moral and professional standards of conduct imposed by law and by his profession
  - b. with all civil and criminal laws, rules and regulations.
2. Respondent will submit written notification to the New York State Department of Health, addressed to the Director of the the Office of Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180-2299, of the following:
  - a. any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility within thirty days of each action;
  - b. any and all changes in personal and professional addresses and telephone numbers and facility affiliations, within 30 days of such changes. This will include any change in practice location, within or outside of the State of New York. The date of departure from the State of New York, and the date of return, if any, must be reported in writing.

Failure to notify the Office of Professional Medical Conduct of any of the above will be considered a violation of probation.

3. Respondent, at his own expense, shall undergo a psychiatric evaluation and treatment by a Board certified psychiatrist licensed to practice medicine in New York State, who shall be subject to approval in advance by the Director of OPMC or her designee. Said psychiatrist, prior to performing the initial evaluation, shall be provided with a copy of this Consent Order and Exhibits A and B, as well as those documents and such other materials as the Petitioner would have introduced as evidence with regard to its allegations as to Patient A. Said evaluation is to be performed and a written copy provided to OPMC within sixty (60) days of the effective date of this Consent Order, or, if Respondent is not engaged in the active practice of medicine in New York State as of the effective date of this Consent Order, then said evaluation is to be performed and a written copy is to

be provided to OPMC within thirty (30) days of the date on which Respondent commences the active practice of medicine in New York State. Following said evaluation, Respondent shall undergo at least monthly therapy sessions for a period of at least one year and thereafter for so long and at such frequency as the psychiatrist shall recommend. Respondent shall cause the psychiatrist to provide quarterly reports to OPMC regarding Respondent's status, progress, compliance with treatment, and need for further treatment. Said treatment shall specifically address the issues of keeping appropriate boundaries with patients, and behaving appropriately with patients. If, during the period of psychiatric treatment, Respondent relocates more than two hundred miles from New York State, Respondent may select a Board certified treating psychiatrist licensed to practice in the state in which Respondent then resides. Any such psychiatrist is subject to the prior approval of OPMC. Any subsequent treating psychiatrist shall be subject to the approval of OPMC, and shall be provided with copies of all materials provided to the prior psychiatrist by OPMC.

4. Respondent, during each year of the period of probation, shall successfully complete one hundred (100) hours of Continuing Medical Education (CME) approved by the Accreditation Council for Continuing Medical Education, for a total of five hundred (500) hours. At least three hundred (300) hours of the Continuing Medical Education must be in the area of medical ethics and/or dynamics of an appropriate doctor/patient relationship. Respondent must seek approval in advance from OPMC for any courses which he proposes to take in satisfaction of this requirement. Respondent shall also submit written verification of his successful completion of his yearly CME requirements to OPMC on an annual basis.
5. Respondent will maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. In cases of prescribing, dispensing, or administering of controlled substances, the medical record shall contain all information required by state rules and regulations regarding controlled substances.
6. Respondent's 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 cease 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 of OPMC again, in writing, prior to any change in his status. Upon Respondent's resumption of the practice of medicine in New York State, the period of probation shall resume and Respondent shall satisfy and fulfill any terms of probation which were not fulfilled.

7. Respondent shall be required to have quarterly meetings during each year of probation with the Director of OPMC or her designee regarding Respondent's compliance with the terms of his probation, Respondent's insight into his conduct which resulted in this disciplinary action, Respondent's present conduct with his patients, and other matters relevant to insuring Respondent's compliance with his probation and assuring that Respondent will conduct himself appropriately with his patients in the future.
8. Respondent, during the period of probation, is required to have a female chaperon present in the room at all times for all physical examinations, medical treatments, consultations, and procedures on female patients. All such female chaperons must be licensed or certified medical professionals approved in advance by OPMC. All such persons who will be serving as chaperons are required to sign affidavits indicating that they have read the Consent Agreement and Order, Exhibit A (Statement of Charges), and Exhibit B (Terms of Probation). Said affidavits to be signed by the chaperons shall acknowledge that they have a responsibility to report to OPMC, and shall indicate that they are to report to OPMC immediately any failure of Respondent to comply, including but not limited to any failure by Respondent to have a chaperon present, and any sexually suggestive or inappropriate comments by Respondent to a patient. Said female chaperons are required to sign the chart of any female patient for any office visit on which the chaperon was present. All persons who will be serving as chaperons are required to provide their home addresses and telephone numbers to OPMC. If at any time during the period of probation a person who served as a chaperon leaves her employment with Respondent, Respondent must notify OPMC accordingly, and must obtain advance approval from OPMC for any substitute chaperon. Any substitute chaperon must submit the above described affidavit prior to commencing her employment.
9. If Respondent fails to pay his civil penalty in full by the date prescribed herein, said failure shall constitute a violation of Respondent's probation, as well be subject to such other penalties set forth in this Order.
10. Respondent shall bear all costs related to his compliance with the terms of probation.
11. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his or her profession in accordance with the terms of probation. Upon receipt of evidence of non compliance with, or any violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against Respondent as may be authorized by law.