



New York State Board for Professional Medical Conduct

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

Richard F. Daines, M.D.
Commissioner
NYS Department of Health
James W. Clyne, Jr.
Executive Deputy Commissioner
Keith W. Servis, Director
Office of Professional Medical Conduct

Public

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

November 18, 2009

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Ernest D. Abeles, M.D.
Redacted Address

Re: License No. 091374

Dear Dr. Abeles:

Enclosed is a copy of Modification BPMC #06-161 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect November 25, 2009.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order and return it to the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299

Sincerely,

Redacted Signature

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

Enclosure

IN THE MATTER
OF
ERNEST D. ABELES, M.D.

MODIFICATION
ORDER

BPMC No. #06-161

Upon the proposed Application for a Modification Order of **ERNEST D. ABELES, M.D.**,
(Respondent), that is made a part of this Modification Order, it is agreed and

ORDERED, that the attached Application and its terms are adopted and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board,
either by mailing, by first class mail, a copy of the Modification Order to Respondent at the
address in the attached Application or by certified mail to Respondent's attorney or upon
transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 11-17-2009

Redacted Signature

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

IN THE MATTER
OF
ERNEST D. ABELES, M.D.

APPLICATION FOR
MODIFICATION ORDER

ERNEST D. ABELES, M.D., (Respondent) being duly sworn deposes and says:

That on or about October 2, 1963, I was licensed to practice medicine in the State of New York, having been issued license number 091374 by the New York State Education Department.

My current address is Redacted Address

I am currently subject to Consent Order BPMC No. #06-161, (hereinafter "Original Order"), annexed hereto, made a part, hereof, and marked as Exhibit 1, that was issued on July 13, 2006.

I am not currently practicing medicine in New York state, and I do not intend to return to practice medicine in New York state, as I have retired from the practice of medicine.

I apply, hereby, therefore, to the State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: to delete the paragraphs in the Original Order that state:

"My license to practice medicine shall be limited, pursuant to §230-a of the Public Health Law, to preclude patient contact and any practice of medicine, clinical or otherwise, and I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition, with the sole exception that I may continue in my current practice of conducting independent medical examinations for the Social Security Administration and for insurance carriers."

"That Respondent shall maintain active registration of Respondent's license with the New York State Education, Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect 30 days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and"

substituting for the above paragraphs:

“ Respondent shall never practice medicine in New York state as a physician or activate his registration to practice medicine as a physician in New York state.”

The Modification Order to be issued will not constitute a new disciplinary action against me, but will substitute the proposed language for the above described language in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance of the Board of this Application, I knowingly waive the right to contest the Original Order or the Modification Order for which I apply, both administratively and judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion to either enter into the proposed Agreement and Modification 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: 11/4/09

Redacted Signature

ERNEST D. ABELES, M.D.
Respondent

The undersigned agree to the attached Application of Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 12 November 2009

Redacted Signature

ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/16/09

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT 1



New York State Board for Professional Medical Conduct

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

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

Kendrick A. Sears, M.D.
Chairman

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

Public

July 14, 2006

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Ernest D. Abeles, M.D.

Redacted Address

Re: License No. 091374

Dear Dr. Abeles:

Enclosed is a copy of Order #BPMC 06-161 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect July 21, 2006.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Redacted Signature

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

Enclosure

cc: Richard Godosky, Esq.
Godosky & Gentile, P.C.
61 Broadway, Suite 2010
New York, NY 10006

IN THE MATTER
OF
ERNEST D. ABELES, M.D.

CONSENT
ORDER

BPMC No. #06-161

Upon the application of (Respondent) ERNEST D. ABELES, 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 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: 7-13-06

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
ERNEST D. ABELES, M.D.

CONSENT
AGREEMENT
AND
ORDER

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

That on or about October 2, 1963, I was licensed to practice as a physician in the State of New York, and issued License No. 091374 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 has charged me with eight 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 agree not to contest the allegations, in full satisfaction of the charges against me, and agree to the following penalty:

My license to practice medicine shall be limited, pursuant to §230-a of the Public Health Law, to preclude patient contact and any practice of medicine, clinical or otherwise, and I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or

physical condition, with the sole exception that I may continue in my current practice of conducting independent medical examinations for the Social Security Administration and for insurance carriers.

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

- That Respondent shall maintain active registration of Respondent's license with the New York State Education, Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect 30 days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and
- That Respondent shall return any and all official New York State prescriptions to the Bureau of Narcotic Enforcement, and shall surrender Respondent's Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within 15 days of the effective date of this Order. Further, within 30 days of returning said prescriptions and surrendering said registration, Respondent shall provide documentary proof of such transaction(s) to the Director of OPMC; and

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

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this 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 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; and

Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Guidelines for Closing a Medical Practice") which is attached.

I stipulate that my failure to comply with any conditions of this 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 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 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 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 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 Order are authorized by Public 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 ask that the Board adopt this Consent Agreement.

I am aware and agree that regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the agreement which I propose and this application which I submit, or to decline to do so.

DATE 6/29/06

Redacted Signature

ERNEST D. ABELES, M.D.
RESPONDENT

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

DATE: 6/28/06

Redacted Signature

~~RICHARD GODOSKY, ESQ.~~
Attorney for Respondent

DATE: 6-30-06

Redacted Signature

~~PAUL STEIN~~
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 07 July 2006

Redacted Signature

~~DENNIS J. GRAZIANO~~
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
ERNEST D. ABELES, M.D.

STATEMENT
OF
CHARGES

ERNEST D. ABELES, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 2, 1963, by the issuance of license number 091374 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From on or about July 17, 1999 through on or about August 16, 1999, Respondent treated Patient A (all patients are identified in Appendix A below), a 54 year old female, in his offices and at NYU Downtown Hospital, New York, New York for a distal right radius and ulnar styloid fracture.
1. Respondent failed to appropriately evaluate and treat Patient A.
 2. Respondent failed to keep an adequate record for Patient A.
- B. From on or about August 6, 1996 through on or about October 23, 1997, Respondent treated Patient B, a 68 year old female, in his offices and at Cabrini Medical Center, New York, New York for left knee pain.
1. Respondent failed to appropriately evaluate and treat Patient B.
 2. Respondent failed to keep an adequate record for Patient B.
- C. From on or about March 31, 1997 through in or about October, 1998, Respondent treated Patient C, a 73 year old female, in his offices and at Cabrini Medical Center, New York, New York.
1. Respondent failed to appropriately evaluate and treat Patient C.

2. Respondent failed to keep an adequate record for Patient C.

SPECIFICATION OF CHARGES

FIRST THROUGH THIRD SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

1. Paragraph A and A1-2.
2. Paragraph B and B1-2.
3. Paragraph C and C1-2

FOURTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

4. Paragraphs A and A1-2; B and B1-2; and/or C and C1-2.

FIFTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

5. Paragraphs A and A1-2; B and B1-2; and/or C and C1-2.

SIXTH THROUGH EIGHTH SPECIFICATIONS

FAILURE 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 for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

6. Paragraphs A and A2.
7. Paragraphs B and B2.
8. Paragraphs C and C2.

DATED: New York, New York
June 30, 2006

Redacted Signature

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE

1. Respondent shall immediately cease the practice of medicine, except as specifically authorized under the terms of this Consent Order. Respondent shall not represent himself as eligible to practice medicine except as specifically authorized under the terms of this Consent Order, and shall refrain from providing an opinion as to professional practice or its application except in accordance with the terms of the Consent Order.
2. Within 15 days of the Consent Order's effective date, Respondent shall notify all patients that he has ceased the practice of medicine except as specifically authorized under the terms of the Consent Order, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within 30 days of the Consent Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six years after the last date of service, and, for minors, at least six years after the last date of service or three years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.
4. Within 15 days of the Consent Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
5. Within 15 days of the Consent Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.

6. Failure to comply with the above directives may result in civil or criminal penalties. Any practice of medicine not specifically authorized by this Consent Order shall constitute the unauthorized practice of medicine. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four years, under § 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under § 230-a of the Public Health Law.