



New York State Board for Professional Medical Conduct

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

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

Charles J. Vacanti, M.D.
Chair

November 1, 1995

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

James M. Barnes, D.O.
1269 Debbar Drive
Silver Creek, New York 14136

RE: License No. 083186

Effective Date: 11/04/95

Dear Dr. Barnes:

Enclosed please find Order #BPMC 95-256 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
Empire State Plaza
Tower Building-Room 438
Albany, New York 12237-0756

Sincerely,

Charles Vacanti, M.D.
Chair
Board for Professional Medical Conduct

Enclosure

cc: Francis J. Offerman, Jr., Esq.
Offerman, Cassano, Pigott & Greco
1776 Statler Towers
Buffalo, New York 14202

Kevin Donovan, Esq.

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

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IN THE MATTER :
OF : ORDER
JAMES M. BARNES, D.O. : BPMC #95-256

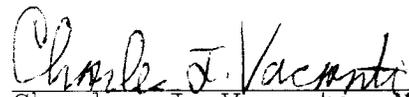
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Upon the application of JAMES M. BARNES, D.O., (Respondent) for Consent Order, which application is made a part hereof, it is ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

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.

SO ORDERED,

DATED: 29 October 1995



Charles J. Vacanti, M.D.
Chairperson
State Board for Professional
Medical Conduct

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

-----X
IN THE MATTER : APPLICATION
OF : FOR
JAMES M. BARNES, D.O. : CONSENT
: ORDER
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

JAMES M. BARNES, D.O., being duly sworn, deposes and says that:

On or about September 16, 1959, I was licensed to practice as a physician in the State of New York, having been issued License No. 83186 by the New York State Education Department.

I am currently registered with the New York State Education Department to practice as a physician in the State of New York for the period January 1, 1995, through March 31, 1996.

I understand that the New York State Board for Professional Medical Conduct has charged me with Ten Specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I admit guilt to the First Specification concerning patients A and F in full satisfaction of the charges against me.

I hereby agree to the penalty of a two year suspension of my license to practice medicine in New York state with twenty-three months of the suspension stayed; the stay of the twenty-three months of license suspension, after completion of the one month actual license suspension, shall be conditioned upon my full compliance with the Terms of Probation attached hereto as Appendix B, during a three year term of probation.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, 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 Board grants my Application, as set forth herein, an order of the Chairperson of the Board

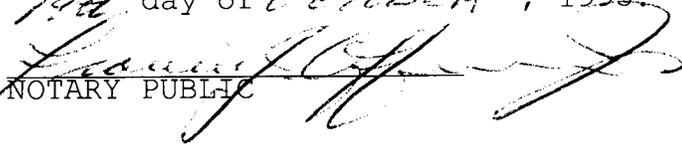
shall be issued in accordance with same.

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



JAMES M. BARNES, D.O.
RESPONDENT

Sworn to before me this

~~19th~~ day of OCTOBER, 1995


NOTARY PUBLIC

FRANCIS J. OFFERMANN, JR.
Notary Public, State of New York
Qualified in Erie County
My Commission Expires April 30, 1996

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

-----X
: APPLICATION
IN THE MATTER :
OF : FOR
: CONSENT
JAMES M. BARNES, D.O.
: ORDER
-----X

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

DATE: 10/19/95 *James M. Barnes, D.O.*
JAMES M. BARNES, D.O.
Respondent

DATE: 10/19/95 *Camille P. Wicher*
CAMILLE P. WICHER
Attorney for Respondent

DATE: 10 23 95 *Kevin P. Donovan*
KEVIN P. DONOVAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 10/24/95 *Kathleen M. Tanner*
KATHLEEN M. TANNER
Director
Office of Professional Medical
Conduct

DATE: 29 October 1995 *Charles J. Vacanti*
CV
CHARLES J. VACANTI, M.D.
Chairperson
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
JAMES M. BARNES, D.O. : CHARGES

-----X

JAMES M. BARNES, D.O., the Respondent, was authorized to practice medicine in New York State on September 16, 1959, by the issuance of license number 83186 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Patient A (patients are identified in Appendix A), a male born on or about September 20, 1920, was treated at Respondent's office, Silver Creek, New York, from at least 1968 until the time of Patient A's death.

1. Respondent inappropriately prescribed salicylates, inappropriate non-steroidal anti-inflammatory drugs, and/or steroids to Patient A without sufficient monitoring or prophylaxis on multiple occasions, after a diagnosis of gastrointestinal ulcer in September 1983.
2. During an admission of Patient A to Lakeshore Hospital, Irving, New York, beginning on or about January 23, 1984, Respondent:
 - a. failed to record Patient A's history of gastrointestinal ulcer;
 - b. failed to adequately evaluate Patient A for causes of iron deficiency anemia.
3. During an admission of Patient A to Lakeshore Hospital beginning on or about July 15, 1988, Respondent failed to appropriately evaluate and

treat Patient A for possible gastrointestinal bleeding or for blood coagulation.

4. After reports of large amounts of tarry stools, paleness, diaphoresis, and inability to move, Respondent admitted Patient A to Lakeshore Hospital on or about October 4, 1988, and:
 - a. failed to arrange for attendance of a physician in an appropriate time frame;
 - b. failed to order appropriate laboratory studies;
 - c. failed to adequately attempt to obtain surgical consultation;
 - d. failed to provide adequate fluids in a timely manner;
 - e. failed to monitor the patient in an intensive care setting in a timely manner.

B. Patient B, a male born on or about December 4, 1928, was treated at Respondent's office from at least 1972 until at least November 1991.

1. Respondent failed to perform or record appropriate histories, physical examinations, or laboratory studies of Patient B, and/or to follow up on a history of myocardial infarction.
2. Respondent inappropriately prescribed Valium to Patient B without adequate medical indication and without noting Patient B's response to the drug, between 1972 and 1991.

C. Patient C, a male born on or about October 5, 1928, was treated at Respondent's office from about 1962 until at least October 1992.

1. Respondent failed to obtain or record an appropriate history, physical examination, or laboratory studies of Patient C.
2. Respondent failed to appropriately evaluate Patient C following gastrointestinal bleeding in August 1986.

3. Respondent failed to appropriately monitor or treat Patient C's blood pressure and potassium level.
4. Respondent inappropriately prescribed Nembutal without adequate medical indication or supervision, between 1981 and 1992.

D. Patient D, a female born on or about July 9, 1949, was treated at Respondent's office from at least 1973 until at least September 1992.

1. Respondent prescribed Valium to Patient D without adequate medical indication and without appropriate documentation of the reason for the prescription or the response to the Valium between 1983 and 1992.
2. Respondent failed to appropriately obtain or record an adequate history or physical examination of Patient D.

E. Patient E, a male born on or about September 22, 1958, was treated at Respondent's office from May 1990, until at least February 1992.

1. Respondent failed to appropriately evaluate Patient E for risk of coronary artery disease despite a family history of that disease.
2. Respondent failed to appropriately follow-up on Patient E's history of hypercholesterolemia.
3. Respondent failed to appropriately document the response of Patient E to prescriptions of Xanax and/or Imipramine between 1990 and 1992.

F. Patient F, a male born on or about November 6, 1942, was treated at Respondent's office from at least 1972 until at least October 1992.

1. Respondent inappropriately prescribed Dexedrine to Patient F without adequate medical indication or appropriate monitoring between 1978 and 1992.

2. Respondent failed to appropriately evaluate Patient F for a suspected sleep disorder.
3. Respondent failed to appropriately obtain or document an adequate history or physical examination or laboratory studies of Patient F.
4. Respondent failed to appropriately monitor Patient F's blood pressure.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

PRACTICING THE PROFESSION WITH NEGLIGENCE

ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession with negligence on more than one occasion within the meaning of New York Education Law §6530(3) (McKinney Supp. 1995), in that Petitioner charges two or more of the following:

1. The facts of paragraphs A and A.1, A and A.2 and A.2.a, A and A.2 and A.2.b, A and A.3, A and A.4 and A.4.a, A and A.4 and A.4.b, A and A.4 and A.4.c, A and A.4 and A.4.d, A and A.4 and A.4.e, B and B.1, B and B.2, C and C.1, C and C.2, C and C.3, C and C.4, D and D.1, D and D.2, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, F and F.3 and/or F and F.4.

SECOND SPECIFICATION

PRACTICING THE PROFESSION WITH INCOMPETENCE

ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession on more than one occasion within the meaning of New York Education Law §6530(5) (McKinney Supp. 1995) in that Petitioner charges two or more of the following:

2. The facts of paragraphs A and A.1, A and A.2 and A.2.a, A and A.2 and A.2.b, A and A.3, A and A.4 and A.4.a, A and A.4 and A.4.b, A and A.4 and A.4.c, A and A.4 and A.4.d, A and A.4 and A.4.e, B

and B.1, B and B.2, C and C.1, C and C.2, C and C.3, C and C.4, D and D.1, D and D.2, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, F and F.3 and/or F and F.4.

THIRD SPECIFICATION

GROSS NEGLIGENCE

The Respondent is charged with practicing the profession with gross negligence within the meaning of New York Education Law §6530(4) (McKinney Supp. 1995) in that Petitioner charges:

3. The facts of paragraphs A and A.1, A and A.2 and A.2.a, A and A.2 and A.2.b, A and A.3, A and A.4 and A.4.a, A and A.4 and A.4.b, A and A.4 and A.4.c, A and A.4 and A.4.d and/or A and A.4 and A.4.e.

FOURTH SPECIFICATION

GROSS INCOMPETENCE

The Respondent is charged practicing the profession with gross incompetence within the meaning of New York Education Law §6530(6) (McKinney Supp. 1995) in that Petitioner charges:

4. The facts of paragraphs A and A.1, A and A.2 and A.2.a, A and A.2 and A.2.b, A and A.3, A and A.4 and A.4.a, A and A.4 and A.4.b, A and A.4 and A.4.c, A and A.4 and A.4.d and/or A and A.4 and A.4.e.

FIFTH THROUGH TENTH SPECIFICATIONS

INADEQUATE RECORDS

Respondent is charged with failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient within the meaning of New York Education Law §6530(32) (McKinney Supp. 1995) in that Petitioner charges:

5. The facts of paragraphs A and A.2 and A.2.a.

6. The facts of paragraphs B and B.1 and/or B and B.2.
7. The facts of paragraphs C and C.1.
8. The facts of paragraphs D and D.1 and/or D and D.2.
9. The facts of paragraphs E and E.3.
10. The facts of paragraphs F and F.3.

DATED: *September 14,* 1995
Albany, New York

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

EXHIBIT "B"

TERMS OF PROBATION

1. JAMES M. BARNES, D.O., the Respondent, shall, during the period of probation, conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession;
2. Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237 of the address and telephone number of any employment, practice and residence, and of any change in the address or telephone number of Respondent's employment, practice or residence, within or without the state of New York;
3. Respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that Respondent has paid all registration fees due and owing to the NYSED and Respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by Respondent to the New York State Department of Health, addressed to the Director of OPMC, as aforesaid, no later than the first three months of the period of probation;
4. Respondent shall submit written proof to the NYSDOH, addressed to the Director of OPMC, as aforesaid, that Respondent is currently registered with the NYSED, unless Respondent submits written proof that Respondent has advised DPLS, NYSED, that Respondent is not engaging in the practice of Respondent's profession in the State of New York and does not desire to register, said proof of the above to be submitted no later than the first three months of the period of probation;
5. Before Respondent may resume practice following the one month suspension, and throughout the remainder of the probationary period, Respondent must comply with the following:
 - a) Respondent must have a practice monitor, proposed by Respondent and approved in advance by OPMC, which monitor shall review randomly selected complete medical records of at least ten different patients per month. The monitor shall receive a copy of this Consent Order.

- b) Respondent shall assure that the monitoring physician referred to in subparagraph (a) files a written report with the Director of OPMC at least every three months, providing a listing of the cases reviewed by the monitor, and an assessment of the adequacy of the care provided by Respondent to patients and of the adequacy of the medical records created by Respondent; in addition, the monitor shall immediately notify the Director of OPMC of Respondent's failure to fully cooperate with the terms of probation related to monitoring;
6. Respondent shall successfully complete, to the satisfaction of the Director of OPMC, training program(s) or tutorial(s) on the topics of prescribing controlled substances, adequate performance and recordkeeping concerning patient histories, physicals, and evaluations, in both the in-patient and office settings, within one year from the effective date of this order. The training program shall be proposed by Respondent, shall cover the topic areas in adequate breadth and depth, and shall be approved in advance in writing by the Director of OPMC. Each program or tutorial shall include written testing of Respondent to aid in determining how successful Respondent has been in absorbing the content of the courses;
 7. Respondent shall be available for meetings every three months with a staff member of OPMC to discuss his compliance with these Terms of Probation and the order of the Board;
 8. Respondent shall make available throughout the probationary period any hospital, office, and/or nursing home medical records of his patients available for review by OPMC; review may take place, in the discretion of OPMC, at the hospital, his office, or any location at which Respondent practices medicine, or by Respondent bringing either specified or random records to a meeting with a staff member of OPMC;
 9. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the order of the Board;
 10. All costs associated with training and monitoring Respondent shall be borne by Respondent;
 11. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his or her aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance 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 such other proceeding against Respondent as may be authorized pursuant to the Public Health Law.