



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

January 14, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Tomas Garchitorena, M.D.
24 Bonaire Drive
Dix Hills, New York 11746

RE: License No. 114384

Dear Dr. Garchitorena:

Enclosed please find Order #BPMC 98-14 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: Daniel Guenzburger, Esq.

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

IN THE MATTER
OF
TOMAS GARCHITORENA, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-14

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

TOMAS GARCHITORENA, M.D., being duly sworn, deposes and says:

That on or about October 31, 1972, I was licensed to practice as a physician in the State of New York, having been issued License No. 114384 by the New York State Education Department.

My current address is 24 Bonaire Drive, Dix Hills, New York 11746, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

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

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

I agree not to contest the First, Fifth, Sixth, Seventh, Eighth, and Ninth Specifications, in full satisfaction of the charges against me.

I hereby agree to the following penalty:

One year stayed suspension, 5 years probation pursuant to the terms annexed hereto as Exhibit B, and a \$10,000.00 (Ten thousand dollars) fine. The probation term of a practice monitor (paragraph 8 of the Terms of Probation) shall commence on February 1, 1998.

I further agree that the fine shall be paid by check made payable to the NYS Department of Health and mailed to the Bureau of Accounts Management, NYS Department of Health, Corning Tower Building, Empire State Plaza, Albany, New York 12237-0030. Two thousand five hundred dollars (\$2500.00) is due on or before May 1, 1998, two thousand five hundred dollars (\$2500.00) is due on or before August 1, 1998, two thousand five hundred dollars (\$2,500.00) is due on or before October 1, 1998, and two thousand five hundred dollars (\$2,500.00) is due on or before December 31, 1998

I further agree that the Consent Order for which I hereby apply shall impose a condition that, except during periods of actual suspension, I 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 shall be in effect beginning thirty days after the effective date of the Consent Order and continuing 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 hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1997).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

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. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

Tomas Garchitorena

TOMAS GARCHITORENA, M.D.
RESPONDENT

Sworn to before me this

30 day of Dec, 1997

Richard J. Colace

NOTARY PUBLIC

RICHARD J. COLACE
Notary Public, State of New York
No. 4799238, Suffolk County
Commission Expires Nov. 30, 1998

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

DATE: 1/5/98



DANIEL GUENZBURGER
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: 1/7/98



ANNE F. SAILE
Director
Office of Professional
Medical Conduct

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

**IN THE MATTER
OF
TOMAS GARCHITORENA, M.D.**

**CONSENT
ORDER**

Upon the proposed agreement of TOMAS GARCHITORENA, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

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: 11/8/98


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

"EXHIBIT A"

IN THE MATTER
OF
TOMAS GARCHITORENA, M.D.

STATEMENT
OF
CHARGES

TOMAS GARCHITORENA, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 31, 1972, by the issuance of license number 114384 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. At all times relevant to the Statement of Charges, the Respondent maintained a bariatrics practice at 141 East 55th Street, New York, New York 10022 and 264 Haypath Road, Old Bethpage, New York 11804. On or about and between October, 1992 and March, 1995, the Respondent treated Patient A with appetite suppressant medication, including but not limited to phentermine hydrochloride. At the onset of treatment, Patient A, a female, was 37 years old, 5 feet tall and weighed 108 pounds. During the period of treatment regarding Patient A, Respondent:
1. Inappropriately prescribed and/or dispensed:
 - a. Appetite suppressant medication.
 - b. Vitamin B12.
 2. Knowingly and falsely represented a diagnosis of hypothyroidism

on Empire Blue Cross Insurance claim forms, when in fact, he knew that Patient A was not hypothyroid.

3. Inappropriately diagnosed hypothyroidism.
4. Failed to take an adequate medical history, including but not limited to a history of Patient A's response to treatment.
5. Failed to perform an adequate physical examination.
6. Failed to maintain a record which adequately reflects the evaluation and treatment of the patient.

B. On or about and between September 22, 1980 and December 12, 1994, the Respondent treated Patient B with appetite suppressant medication, including but not limited to phentermine hydrochloride. At the onset of treatment Patient B, a female, was 46 year years old, weighed 137 pounds and was 5 feet seven inches tall. During the period of treatment regarding Patient B, Respondent:

1. Inappropriately prescribed and/or dispensed:
 - a. Appetite suppressant medication.
 - b. Vitamin B12.
2. Failed to order appropriate laboratory tests.

3. Failed to take an adequate medical history, including but not limited to a history of Patient B's response to treatment.
4. Failed to maintain a record which adequately reflects the evaluation and treatment of the patient.

C. On or about and between February, 1986 and December, 1995, the Respondent treated Patient C with appetite suppressant medication, including but not limited to phentermine hydrochloride. At the onset of treatment, Patient C, a female, was 59 year old, weighed 137 pounds and was 5 feet and 3 inches. During the period of treatment of Patient C, Respondent:

1. Incorrectly diagnosed:
 - a. Hypothyroidism.
 - b. Hypertension.
2. Knowingly and falsely represented a diagnosis of hypothyroidism and/or hypertension on health insurance claim forms pertaining to Patient C, when in fact, Respondent knew that Patient C was neither hypertensive nor hypothyroid.
3. Inappropriately prescribed and/or dispensed Vitamin B12.
4. Failed to take an adequate medical history, including but not limited to a history of Patient C's response to treatment.

5. Failed to maintain a record which adequately reflects the evaluation and treatment of the patient.

D. On or about and between November, 1987 and July, 1996, the Respondent treated Patient D, A female with appetite suppressant medication, including but not limited to phentermine hydrochloride. At the onset of treatment, Patient D, a female, was 25 years old, 5 feet 6 inches tall and weighed 142 pounds. During the period of treatment regarding Patient D, Respondent:

1. Incorrectly diagnosed hypothyroidism.
2. Inappropriately prescribed and/or dispensed Vitamin B12.
3. Failed to take an adequate medical history, including but not limited to a history of Patient D's response to treatment.
4. Failed to maintain a record which accurately reflects the evaluation and treatment of the patient.

E. On or about and between May, 1968 and June, 1996, the Respondent treated Patient E with appetite suppressant medication, including but not limited to, phentermine hydrochloride. At the onset of treatment, Patient E, a female, was 39 year old, 5 feet and 7 inches tall and weighed 162 pounds. During the period of treatment regarding Patient E, Respondent:

1. Incorrectly diagnosed hypothyroidism.
2. Inappropriately prescribed and/or dispensed Vitamin B12.
3. Failed to take an adequate medical history, including but not limited to failing to taking a history of Patient E's response to treatment.
4. Failed to maintain a record which accurately reflects the evaluation and treatment of the patient.

F. On or about and between March 30, 1993 and April 6, 1993, the Respondent treated Patient F for obesity. Patient F was 40 years old, 5 feet and 5 1/2 inches and weighed 209 pounds. During the period of treatment regarding Patient F, Respondent:

1. Revealed personally identifiable facts, data or information to

Patient F's co-workers. The personal information, which included the fact that Respondent was treating Patient F for obesity and that she was pregnant, was information that Respondent obtained in his professional capacity and which he revealed without Patient F's consent.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1997) 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:

1. A, A1, A1(a), A1(b), A3, A4, A5, A6; B, B1, B1(a), B1(b), B2, B3, B4; C, C1, C1(a), C1(b), C3, C4, C5; D, D1, D1(a), D1(b). D2, D3, D4; E, E1, E2, E3, E4,; F, and/or F1.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1997) 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:

2. A, A1, A1(a), A1(b), A3, A4, A5, A6; B, B1, B1(a), B1(b), B2, B3, B4; C, C1, C1(a), C1(b), C3, C4, C5; D, D1, D1(a), D1(b). D2, D3, D4; E, E1, E2, E3, E4,; F, and/or F1.

THIRD THROUGH FOURTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(2)(McKinney Supp. 1997) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

3. Paragraphs A and A2.
4. Paragraphs C and C2.

FIFTH THROUGH NINTH SPECIFICATIONS

RECORDKEEPING

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 1997) by failing to maintain a record which accurately reflects the evaluation and treatment of the patients as alleged in the facts of:

5. Paragraphs A and A6.
6. Paragraphs B and B4.
7. Paragraphs C and C5.
8. Paragraphs D and D4.
9. Paragraphs E and E4.

TENTH SPECIFICATION

BREACH OF CONFIDENTIALITY

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(25)(McKinney Supp. 1997) by revealing personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient, as alleged in the facts of:

10. Paragraphs F and F1.

DATED: December , 1997
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is 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 non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The 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 leave 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 again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

PRACTICE MONITOR

8. Respondent shall practice medicine only when monitored by a licensed physician, in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 15) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.