



New York State Board for Professional Medical Conduct

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

Dennis P. Whalen
Executive Deputy Commissioner of Health
Anne F. Saille, Director
Office of Professional Medical Conduct
William J. Comiskey, Chief Counsel
Bureau of Professional Medical Conduct

William P. Dillon, M.D.
Chair
Denise M. Bolan, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

December 8, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Michael V. DiVito, R.P.A.
8 Cutter Drive
Rochester, New York 14624

RE: License No. 005032

Dear Mr. DiVito:

Enclosed please find Order #BPMC 98-293 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **December 8, 1998.**

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

Sincerely,

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

Enclosure

cc: Thomas Smith, Esq.
Harter, Secrest & Emery
700 Midtown Tower
Rochester, NY 14604-2070

Wayne E. Olinzock, Esq.

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

IN THE MATTER
OF
MICHAEL V. DIVITO, R.P.A.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-293

MICHAEL V. DIVITO, R.P.A., (Respondent) says:

That on or about February 28, 1995 , I was registered as a physician's assistant in the State of New York, having been issued License No. 005032 by the New York State Education Department.

My current address is 8 Cutter Drive, Rochester, New York 14624 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 five specifications of professional misconduct.

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

I do not contest those Specifications marked as Third, Fourth, Fifth and Sixth, in full satisfaction of the charges against me. I hereby agree to the following penalty:

a censure and reprimand;

a one year period of suspension stayed;

a two year period of probation during which time I must fully comply with the Terms of Probation as set forth in Exhibit "B" including a practice supervisor for the duration of probation

I further agree that the Consent Order for which I hereby apply

shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's 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; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent.

Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC.

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 1998).

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 agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

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.

AFFIRMED:

DATED 11/23/98

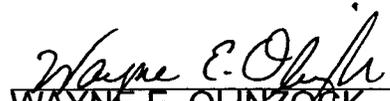

MICHAEL V. DIVITO, R.P.A.
RESPONDENT

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

DATE: 11/24/98


THOMAS SMITH, ESQ.
Attorney for Respondent

DATE: 11/25/98


WAYNE E. OLINZOCK, Esq.
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: November 30, 1998


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
MICHAEL V. DIVITO, R.P.A.

CONSENT
ORDER

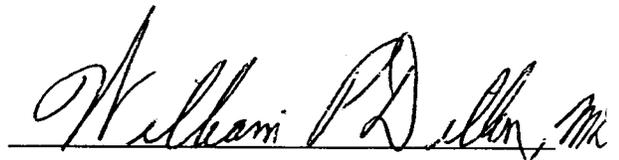
Upon the proposed agreement of MICHAEL V. DIVITO, R.P.A.,
(Respondent) for Consent Order, which application is made a part hereof, it is
agreed to and

ORDERED, that the application and the provisions thereof are hereby
adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board,
which may be accomplished by mailing, by first class mail, a copy of the Consent
Order to Respondent at the address set forth in this agreement or to
Respondent's attorney by certified mail, or upon transmission via facsimile to
Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 12/2/98



State Board for Professional
Medical Conduct

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

-----X

IN THE MATTER : STATEMENT
OF : OF
MICHAEL V. DIVITO, R.P.A. : CHARGES

-----X

MICHAEL V. DIVITO, R.P.A., the Respondent, was registered as a physician's assistant in New York State on February 28, 1995 by the issuance of license number 005032 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A, (patients are identified in the attached Appendix), a female patient then 26 years old, on or about January 3, 1998 at Park Ridge Hospital, 1555 Long Pond Road, Rochester, New York 14626 (hereinafter, Park Ridge Hospital). Respondent's care of Patient A did not meet accepted standards of care, in that:

1. Respondent fraudulently recorded that he performed a physical assessment of Patient A, without such ever being done.
2. Respondent failed to maintain an adequate record for Patient A.

B. Respondent provided medical care to Patient B, a female infant then 15 months old, on or about June 21, 1997 at Park Ridge Hospital. Respondent's care of Patient B did not meet

accepted standards of care, in that:

1. Respondent failed to appropriately examine and/or treat Patient B's dog bite wounds.
2. Respondent failed to maintain an adequate record for Patient B.

C. Respondent provided medical care to Patient C, a male patient then 26 years old, on or about January 21, 1998 at Park Ridge Hospital. Respondent's care of Patient C did not meet accepted standards of care, in that:

1. Respondent fraudulently recorded that he performed a physical assessment of Patient C, without such ever being done.
2. Respondent failed to maintain an adequate record for Patient C.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(2) by reason of his practicing the profession fraudulently, in that Petitioner charges:

1. The facts in Paragraphs A and A.1.

SECOND SPECIFICATION

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(2) by

reason of his practicing the profession fraudulently, in that
Petitioner charges:

1. The facts in Paragraphs C and C.1.

THIRD SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under New York Education Law § 6530(3) by reason of his practicing the profession with negligence on more than one occasion in that Petitioner charges the Respondent committed two or more of the following:

2. The facts in Paragraphs A and A.1, A and A.2, B and B.1, B and B.2, C and C.1 and/or C and C.2.

FOURTH, FIFTH AND SIXTH SPECIFICATIONS

INADEQUATE RECORD KEEPING

Respondent is charged with professional misconduct under New York Education Law § 6530(32) by reason of his having failed to maintain a record for each patient which accurately reflects the evaluation and treatment of each patient in that Petitioner charges:

3. The facts in Paragraphs A and A.2.
4. The facts in Paragraphs B and B.2.
5. The facts in Paragraphs C and C.2.

DATED: *November 25*, 1998
Albany, New York



PETER D. VAN BUREN
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. 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].
4. 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.
5. 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.
6. 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.
7. 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.

8. Respondent shall practice as a physician's assistant only when supervised in his medical practice. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. The practice supervisor shall be proposed by Respondent and subject to the written approval of the Director. The practice supervisor shall not be a family member or personal friend, or be in a professional relationship which could pose a conflict with supervision responsibilities.
9. Respondent shall ensure that the practice supervisor is familiar with the Order and terms of probation, and willing to report to OPMC. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
10. Respondent shall authorize the practice supervisor to have access to his patient records and to submit quarterly written reports, to the Director of OPMC, regarding Respondent's practice. These narrative reports shall address all aspects Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, general demeanor, time and attendance, the supervisor's assessment of patient records selected for review and other such on-duty conduct as the supervisor deems appropriate to report.