



New York State Board for Professional Medical Conduct

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Executive Secretary

October 29, 2007

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Jerzy Rogowski, M.D.
Box 681
Clark Mills, NY 13321

Re: License No. 212712

Dear Dr. Rogowski:

Enclosed is a copy of the Modification Order #BPMC 00-224 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect November 5, 2007.

Sincerely,

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

Enclosure

cc: Andrew Knoll, M.D., J.D.
507 Plum Street
Suite 300
Syracuse, NY 13204

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

IN THE MATTER	MODIFICATION
OF	OF
JERZY ROGOWSKI, M.D.	CONSENT ORDER

This matter was brought to the New York State Board for Professional Medical Conduct for decision at the request of Jerzy Rogowski, M.D., (Licensee), License No. 212712. Licensee entered into Consent Order BPMC No. 00-224, effective August 18, 2000. The Order suspended Licensee's license to practice medicine for a minimum period of no less than two years. The purpose of this proceeding was to determine whether this suspension was to be stayed upon the satisfaction of a Committee on Professional Conduct of the State Board for Professional Medical Conduct that Licensee, among other things, has successfully complied with or completed a course of therapy and ongoing evaluation, which includes a determination that Licensee is no longer incapacitated for the active practice of medicine and that he is both fit and competent to practice as a physician.

A meeting of the Committee was held in the above-entitled proceeding on June 22, 2007. Licensee appeared with his attorney, Andrew Knoll, M.D., J.D., before a Committee of the State Board for Professional Medical Conduct consisting of Richard F. Kasulke, M.D., Chair, Suwarna Naik, M.D., and Peter S. Koenig, Sr. The Committee determined, by unanimous decision, after review of the documents submitted for the petition and careful consideration of all evidence and testimony provided, that the suspension of Licensee's license shall be stayed and he shall be allowed to practice medicine subject to the following conditions.

THEREFORE, IT IS HEREBY ORDERED THAT:

Licensee's return to practice is subject to the following conditions. Unless otherwise indicated, these conditions shall remain in effect for a period of probation lasting **eight (8) years** from the effective date of this Order.

Licensee may not commence the practice of medicine in New York State until all proposed monitors have been approved in writing by the Director of OPMC.

1. The period of probation, including some or all of the terms and conditions described herein, may be tolled, at the discretion of the Director of OPMC, during periods in which the Licensee is not engaged in the active practice of medicine in New York State. Licensee shall notify the Director, in writing, if he 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. Licensee shall submit written notification to the Director prior to any change in that status. Licensee shall not resume the practice of medicine in New York State without the approval of the Director and shall comply with any requests from the Director necessary for such approval. Upon the Director's approval, the period of probation shall resume and any terms of probation, which were not fulfilled, shall be fulfilled upon Licensee's return to practice in New York State.

2. Licensee shall remain free from alcohol and all other mood altering substances other than those prescribed for Licensee's treatment by a licensed physician aware of Licensee's history. **Licensee shall not self-prescribe any medications.**

3. Licensee shall be monitored by a qualified health care professional (Sobriety Monitor) proposed by Licensee and approved in writing by the Director of the OPMC. The Sobriety Monitor is to be familiar with Licensee's history of alcohol dependency and with the terms of this Order. Licensee shall submit the name of a proposed successor within seven (7) days of learning that the approved Sobriety Monitor is no longer willing or able to serve.

a. The Sobriety Monitor shall oversee Licensee's compliance with the terms and conditions imposed herein and shall cause to be performed forensically valid, random, supervised, unannounced tests for the presence of alcohol and other drugs in Licensee. Licensee must be specifically tested for the presence of alcohol. **Licensee shall be screened at a frequency of no less than six (6) times per month for the first year of practice, with two (2) random specimens specifically tested for the presence of ethyl glucuronide (EtG) each month.** The Licensee shall be called on a seven day a week basis and drug screens must include weekend and evening collections. After the first year of practice, if Licensee has been fully compliant with this Order, a request for a reduction in the number of screenings may be submitted for approval in writing by the Director of OPMC.

b. The Sobriety Monitor shall notify OPMC immediately if Licensee refuses such a test.

c. The Sobriety Monitor shall notify OPMC immediately if such a test reveals, or if the monitor otherwise learns, the Licensee is not alcohol/drug free.

d. Every three (3) months, the Sobriety Monitor shall submit to OPMC a report certifying compliance with each of the terms of this Order or describing in detail any failure to comply. The quarterly reports shall include forensically valid results of all tests for the

presence of alcohol and other drugs performed during that quarter.

e. Licensee shall report to the Sobriety Monitor **within four (4) hours** of being contacted by the Sobriety Monitor to submit a hair, blood, breath oral fluid and/or urine specimen.

f. Licensee shall avoid all substances that may cause positive results such as poppy seeds/mouthwash/cough medication/herbal teas. **Any positive result will be considered a violation of this Order.**

g. If Licensee is to be unavailable for sobriety monitoring for a period of 15 days or more, Licensee shall notify his Sobriety Monitor and seek and receive prior written permission from the Director of OPMC subject to any additional terms and conditions required by the OPMC.

4. **Licensee shall not engage in the independent practice of medicine until he completes a residency or transitional training program.** Licensee shall provide a copy of this Order to the Director of any residency or transitional training program in which he participates.

5. **Licensee shall not engage in the solo practice of medicine for the duration of the Order.**

6. **Following the completion of the residency or transitional training program, Licensee shall practice no more than 40 hours per week for a period of four (4) years.** After that time, Licensee may submit a written request to the Director of OPMC that his hours be increased.

7. Licensee shall be supervised in his practice by a licensed physician (Practice Supervisor) proposed by Licensee and approved in writing by the Director of OPMC. The Practice Supervisor is to be familiar with Licensee's history of alcohol dependency and with the terms of this Order. Licensee shall submit the name of a proposed successor within seven (7) days of becoming aware that Licensee's approved Practice Supervisor is no longer willing or able to serve in that capacity.

- a. The Practice Supervisor shall submit a report to OPMC every three (3) months regarding the quality of Licensee's practice, any unexplained absences from work, and Licensee's compliance or failure to comply with each condition described within this Order.
 - b. The Practice Supervisor shall establish the capability of immediately obtaining a drug screen on Licensee in response to any complaint or observation that indicates Licensee may not be drug or alcohol free
 - c. The Practice Supervisor shall oversee the Licensee's prescribing, administering, dispensing, ordering, inventory and wasting of controlled substances.
 - d. The Practice Supervisor shall immediately report any suspected or actual impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
 - e. The Practice Supervisor shall notify OPMC immediately if Licensee violates any term(s) of this Order
8. Licensee shall not treat nor prescribe medications for any friends or family members.

9. Licensee shall continue in treatment with a qualified health care professional (Therapist) proposed by Licensee and approved in writing by the Director of OPMC. The Therapist is to be familiar with the Licensee's history of alcohol dependency and the terms of this Order. Licensee shall continue in treatment for as long as deemed necessary by the Therapist, at a frequency of therapy visits to be decided by the Therapist. Licensee shall submit the name of a proposed successor within seven (7) days of becoming aware that an approved Therapist is no longer willing or able to serve in that capacity.

a. The Therapist shall submit reports to OPMC every three (3) months certifying compliance with treatment by Licensee and describing in detail any failure to comply.

b. The Therapist shall report immediately to OPMC any significant pattern of absences or failure to comply with recommended treatment, including any prescribed medications, by Licensee.

10. The Director of OPMC shall reserve the authority to direct the Licensee to undergo an independent evaluation by a practitioner or facility approved by the Director of OPMC that specializes in alcohol/chemical dependency issues and/or mental illness. The Licensee shall execute authorizations to provide the evaluator with copies of all previous treatment records and provide the evaluator with a copy of this Order. The Licensee shall execute authorizations, and keep said authorizations active, allowing the evaluator to obtain collateral information and communicate with OPMC. Reports of such evaluations shall be submitted directly to the Director of OPMC. Licensee shall follow treatment recommendations made by the evaluator. If the evaluator determines that the Licensee is not fit to practice, the Licensee shall immediately cease practice until it is determined he is

fit to resume practice. Failure to comply with the treatment recommendations will be considered a violation of this Order.

11. Licensee shall continue participation in self-help fellowship (e.g., AA, Caduceus, other). Licensee shall maintain an ongoing relationship with a sponsor.

12. Licensee shall continue enrollment in the Committee for Physicians Health (CPH) and shall engage in a contract with CPH, which fully describes the terms, conditions and duration of a recovery program. Respondent shall fully comply with the contract.

a. Licensee shall provide a written authorization for CPH to provide to the Director of OPMC with any/all information or documentation requested by OPMC, including full access to all records maintained by CPH with respect to Licensee, to determine whether Licensee is in compliance with the contract.

b. Licensee shall cause CPH to report to OPMC if Licensee refuses to comply with the contract, refuses to submit to treatment or if his impairment is not substantially alleviated by treatment. CPH shall report immediately to OPMC if Licensee is regarded at any time to be an imminent danger to the public.

13. Licensee shall inform all physicians or other health care practitioners from whom Licensee seeks treatment of Licensee's history of alcohol dependency. Should Licensee be prescribed any controlled or mood-altering substances, Licensee shall notify the Sobriety Monitor and the Director of OPMC before such medications are administered.

14. The Director of OPMC shall reserve the right to review Licensee's professional performance. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts (inclusive of electronic records), and interviews with or periodic visits with Licensee and staff at his practice locations or OPMC offices.

15. Licensee shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

16. Licensee shall conduct himself in all ways in a manner befitting his professional status and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

17. Licensee shall provide the Director of OPMC with the following information and shall ensure that such information is kept current: a full description of Licensee's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; all professional licenses held and applied for; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.

18. Licensee shall fully cooperate in every respect with OPMC in its administration and enforcement of this Order and in its investigation of all matters regarding Licensee. Licensee shall respond in a timely manner to requests from OPMC to provide written periodic verification of Licensee's compliance with the terms of this Order. Licensee shall respond promptly and provide any and all requested documents and information within Licensee's control upon the direction of OPMC.

19. Licensee shall personally meet with a person designated by the Director of OPMC as requested by the Director, at a time and location determined by OPMC.

20. Should Licensee practice medicine in another state, he shall provide written authorizations for the State Medical Board and/or the Physician Health Program to provide the Director of OPMC with any/all information or documentation as requested by OPMC.

21. Licensee shall comply with all terms, conditions, restrictions and limitations to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance of the Order. 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 Licensee as may be authorized pursuant to the law.

As Licensee agreed in the Consent Order, failure to comply with any of the conditions described above may result in disciplinary action.

This Order shall be effective upon issuance.

Dated: 10 | 23/07.



Richard F. Kasulke, M.D.
Committee Chair
NYS Board for Professional Medical Conduct