

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

IN THE MATTER
OF
DANIEL J. ZIMMERMAN, M.D.

CONSENT
ORDER

BPMC No. #08-182

Upon the application of (Respondent) DANIEL J. ZIMMERMAN, 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 Consent 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: 9-22-2008

Redacted Signature

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

IN THE MATTER
OF
DANIEL J. ZIMMERMAN, M.D.

CONSENT
AGREEMENT
AND
ORDER

DANIEL J. ZIMMERMAN, M.D., represents that all of the following statements are true:

That on or about May 27, 1989, I was licensed to practice as a physician in the State of New York, and issued License No. 154263 by the New York State Education Department. My license to practice medicine in New York is currently "inactive" pursuant to a Temporary Surrender of License Order, which was effective on or about December 26, 1999, and which will remain in effect until Respondent's license is restored, in accordance with its terms. The terms and conditions of the Temporary Surrender shall remain in effect, with the sole exception that Respondent may practice medicine in other jurisdictions as permitted by those jurisdictions (i.e. in accordance with the laws and governing orders of those jurisdictions) without violating the terms of his Temporary Surrender in New York. (A copy of the Temporary Surrender of License Order is attached as Exhibit "B", and made part of this Order.) My current address is c/o Ralph Erbaio, Jr., Esq., Kern Augustine Conroy & Schoppmann P.C., 420 Lakeville Road, Lake Success, N.Y. 11042, 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 (Board) has charged me with one specification of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the First Specification, Practicing While License Suspended or Inactive, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand. Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of five years, subject to the terms set forth in attached Exhibit "C".

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

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension or temporary surrender) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120

days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

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

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. 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 N.Y. Pub. 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 Consent 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 Consent Order, this agreement, and all attached Exhibits, with the sole exception of Exhibit "B", 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 Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC 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 I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent 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.

DATE

9.6.08

Redacted Signature

~~DANIEL J. ZIMMERMAN, M.D.~~
RESPONDENT

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

DATE: 9-10-08

Redacted Signature

~~RALPH ERBAIO, JR., ESQ.~~
Attorney for Respondent

DATE: 9/12/08

Redacted Signature

~~LESLIE EISENBERG~~
ASSOCIATE COUNSEL
Bureau of Professional Medical Conduct

DATE: 9/19/08

Redacted Signature

~~KEITH W. SERVIS~~
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
DANIEL J. ZIMMERMAN, M.D.

STATEMENT
OF
CHARGES

Daniel J. Zimmerman, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 27, 1989, by the issuance of license number 154263 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about December 26, 1999, Respondent executed a Temporary Surrender pursuant to Public Health Law Section 230(13)(a), based on his incapacity for the practice of medicine due to substance abuse. That surrender was accepted by the Director of OPMC and remains in effect. Under the terms of the statute and the terms of the Temporary Surrender, Respondent is not, and has not been, authorized to practice medicine within or outside New York State. Respondent was advised and knows that any practice of medicine while his license was inactive, regardless of the location of such practice, constitutes misconduct pursuant to New York Education Law Section 6530(12).
1. Since in or about April 2006, Respondent has been practicing medicine at Addiction Pain Associates in Sewell, New Jersey.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING WHILE LICENSE SUSPENDED OR INACTIVE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(12) by practicing the profession while the license is suspended or inactive as defined in subdivision thirteen of section two hundred thirty of the public health law as alleged in the facts of:

1. Paragraph A and its subparagraphs.

DATE:

~~August~~, 2008
~~New York, New York~~

Redacted Signature

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "C"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension or temporary surrender) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; all current and past affiliations and/or privileges, with hospitals, institutions, facilities, medical practices, managed care organizations, and/or applications for such affiliations and/or privileges; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].

6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
 - a. As of the effective date of this Consent Order, Respondent's license is "inactive," and the terms of probation are tolled. Should Respondent's license, which is currently temporarily surrendered, be restored, Respondent shall be subject to the terms and conditions of this Consent Order, **and, in addition**, such terms and conditions as the Board may impose in any Restoration Order that may issue in future. The terms and conditions of the Restoration Order shall be incorporated into the terms of this Consent Order as additional terms of probation, as of the effective date of the Restoration Order.
7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
9. Respondent shall maintain complete and legible medical records that

accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.

10. Respondent shall enroll in and complete a continuing education program, which shall be subject to the Director of OPMC's prior written approval, and which shall be completed within the first 90 days of the probation period.
11. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.