



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

June 11, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Andrew Schwartz, RPA
PO Box 1539
Monticello, New York 12701

RE: License No. 004046

Dear Mr. Schwartz:

Enclosed please find Order #BPMC 98-109 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **June 11, 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.

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: Roy Nemerson, Esq.

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

IN THE MATTER
OF
ANDREW SCHWARTZ, R.P.A.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-109

STATE OF NEW YORK)
COUNTY OF) ss.:

ANDREW SCHWARTZ, R.P.A. being duly sworn, deposes and says:
On or about August 17, 1990, I was licensed to practice as a physician assistant in the State of New York having been issued Registration No. 004046 by the New York State Education Department.

My current address is PO Box 1539, Monticello, NY 12701 and my Residence is at 26 North Street Monticello, NY 12701, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that I am charged with one specification of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit "A".

I do not contest the specification of misconduct, in full satisfaction of the charges against me. I hereby agree to the following penalty:

My license to practice as a physician assistant in the State of New York shall be suspended wholly and indefinitely.

With the proviso that such indefinite period of suspension shall continue for no

less than six months, I shall be permitted, upon compliance with all conditions and after the passage of said minimum period, to petition the State Board for Professional Medical Conduct for a Modification Order, staying such suspension and permitting me to practice as a physician assistant under whatever limitation(s), term(s) of probation, or further conditions the Board may deem appropriate in its reasonable discretion, such discretion to be exercised by a Committee on Professional Conduct, after I have met a burden of proof and persuasion in a proceeding as set forth in this agreement. I understand and agree that the Committee's exercise of such discretion shall not be reviewable through recourse to the Administrative Review Board.

I shall be subject to the following Condition, which I hereby stipulate and agree may be imposed pursuant to §230 of the Public Health Law:

- Except during periods of actual suspension, I shall 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 1998).
- I shall execute all necessary releases and consents to authorize the Office of Professional Medical Conduct to obtain reports and records

of any and all independent psychiatric, mental health, or impairment evaluations to which I have or may submit, including but not limited to such evaluation(s) performed during the final calendar quarter of 1997. 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 this Application.

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 further proceedings 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.

Andrew Schwartz

ANDREW SCHWARTZ, R.P.A.
RESPONDENT

Sworn to before me this

29 day of May 1998

Bridget Hurwitz
NOTARY PUBLIC

BRIDGET HURWITZ
Notary Public, State of New York
Sullivan County Clerk's #7
Commission Expires 7-18-98

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

DATE: _____

Attorney for Respondent (if any)
[Leave blank if unrepresented]

DATE: 6/1/98



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

DATE: 6/5/98



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
ANDREW L. SCHWARTZ, R.P.A.

STATEMENT
OF
CHARGES

ANDREW L. SCHWARTZ, R.P.A., the Respondent, was authorized to practice as a Physician Assistant in New York State on or about August 17, 1990, by the issuance of Registration number 00406 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent has been subject to terms of probation imposed by Order BPMC #96-251 since October of 1996. Said Order is incorporated herein. Beginning in or about October of 1997 and thereafter, Respondent has failed to fully comply with such terms.

SPECIFICATION OF CHARGES
VIOLATING A TERM OF PROBATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(29)(McKinney Supp. 1998) by violating a term of probation imposed pursuant to N.Y. Public Health Law §230, as alleged in the facts of:

1. Paragraph A.

DATED: May , 1998
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "A"

EXHIBIT "B"

1. I request, agree, and understand that the suspension of my license shall be terminated only upon a showing to the satisfaction of a Committee on Professional Conduct of the State Board for Professional Medical Conduct (henceforth "Committee") that I have successfully complied with or completed a course of treatment for chemical dependency and ongoing evaluation, which successful compliance or completion must include a determination by said Committee that I am no longer incapacitated for active practice as a physician assistant and that I am both fit and clinically competent to practice medicine. I shall provide to the Office of Professional Medical Conduct a proposed treatment plan, for advice as to whether it is generally appropriate, but I understand that the determination of successful compliance with or completion of the course of therapy shall be made solely by the Committee, and shall include, but not be limited to, a determination that I am no longer incapacitated for active practice as a physician assistant.

2. I request, agree, and understand that upon my request, a meeting of a Committee shall be convened for the purpose of my making the showing referred to in paragraph 1. The Board will make reasonable attempts to convene a Committee not later than 90 days after my request, which shall not be deemed to have been perfected until receipt, by the Director of the Office of Professional Medical Conduct, of all that is required to be provided by me pursuant to the Conditions imposed upon me and pursuant to paragraph 3 below. I understand and agree that the procedural nature of said proceeding shall be determined by the State Board for Professional Medical Conduct through the discretion of the Director of the Office of Professional Medical Conduct upon consultation with Counsel, Bureau of Professional Medical Conduct. I understand and agree that proceedings before said Committee shall *not* be in the nature of a *hearing* pursuant to New York Public Health Law §230, but shall, instead, be informal and intended only for the purpose of addressing any and all facts, evidence, information, circumstances, or issues which do or may relate to the advisability of terminating the suspension of my license. The Committee shall be given access to evidence including but not limited to:

- a. Any and all evidence pertaining to Respondent's compliance with the Conditions imposed.
- b. Any evidence which the Director of the Office of

Professional Medical Conduct or Counsel,
Bureau of Professional Medical Conduct
deems appropriate.

3. I request, agree, and understand that at the time that I request that a meeting of a Committee be scheduled, pursuant to paragraph 2, I will provide the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299, with the following:

- a. The signed acknowledgements from the supervising physician and monitor referred to in paragraph 5 and its subparagraphs.
- b. The signed acknowledgement from the health care professional referred to in paragraph 5 and its subparagraphs.
- c. Certified true and complete copies of records of all evaluation and treatment, relating to my impairment, whether that evaluation and treatment occurred prior to or during the time this surrender is in effect. These records shall include documentation of the results of all urine/blood/breath tests conducted to detect the presence of drugs and/or alcohol.
- d. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
- e. Upon request of the Director of OPMC, a current in-depth chemical dependency evaluation by a health care professional, approved in advance and in writing by the Director.
- f. Upon request of the Director of OPMC, a report of a complete clinical competency assessment, performed by a program for such assessment, such program to be proposed by Respondent and subject to the prior written approval of the Director.
- g. My attendance at, participation in, and cooperation with an

interview conducted by personnel of OPMC, upon the request of the Director thereof.

Provision of the aforesaid documents does not constitute a showing that I am no longer incapacitated for active practice as a physician assistant.

4. At the proceeding referred to in paragraph 2, I will provide the committee, at a minimum, with the following:

- a. Certified true and complete records of all rehabilitation, treatment, evaluation, and/or testing, whether in an out-patient, in-patient, office, or consultation setting.
- b. Evidence of compliance with the terms of a continuing after-care out-patient treatment plan that addresses the major problems associated with my illness.
- c. Evidence that I have maintained adequate knowledge and competence to practice as a physician assistant. Such evidence shall include documentation of continuing medical education and, if so requested by the Director of OPMC, a report of an independent evaluation of my medical knowledge and competence.

Submission of the aforesaid evidence does not constitute a showing that I am no longer incapacitated for active practice as a physician assistant.

5. I request, agree, and understand that if the Chairperson of the Committee issues an order (Order) finding that I have successfully completed the prescribed course of treatment, and staying the suspension of my license, the Order shall further impose a period of probation, pursuant to New York Public Health Law §230-a, during which my practice as a physician assistant shall be subject to conditions imposed. My practice shall be subject to such conditions for a period of no less than five years. The minimum conditions shall include:

- a. I will remain drug and alcohol free.
- b. My sobriety will be monitored by a health care professional, proposed by me and approved in writing by the Director of

OPMC, in accordance with the conditions of restoration set forth in or annexed to the Order. Said monitor shall acknowledge his/her willingness to comply with the monitoring by executing the acknowledgement provided by OPMC.

- i. Said monitor shall be familiar with my history of substance abuse, with this Consent Order, and with the conditions of practice set forth in or annexed to the Order. Said monitor shall not be my treating physician.
 - ii. Said monitor shall see me at least twice during a quarter.
 - iii. Said monitor shall direct me to submit to unannounced tests of my blood, breath, and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time such a test is refused by me or is positive.
 - iv. Said monitor shall report to OPMC any noncompliance with the imposed conditions.
 - v. Said monitor shall not be a personal friend.
 - vi. Said monitor shall submit to OPMC quarterly reports either certifying my compliance, or detailing my failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
- c. I shall be required to comply with the terms of a continuing after-care treatment plan that addresses the major problems associated with my illness.
- d. At the direction of the Director of OPMC, I will submit to periodic interviews with, and evaluations by, a board certified psychiatrist or other licensed health care practitioner designated by the Director. Said practitioner shall report to the Director regarding my condition

and my fitness or incapacity to practice as a physician assistant.

- e. I will be supervised in my practice by a licensed physician, proposed by me and approved in writing by the Director of OPMC, in accordance with the conditions contained in or annexed to the Order. Said supervising physician shall be familiar with my illness and with the Order and its conditions. Said supervising physician shall supervise my compliance with the conditions of practice imposed by the Order. Said supervising physician shall be in a position regularly to observe and assess my practice. Said supervising physician shall acknowledge his/her willingness to comply with the supervision by executing the acknowledgement provided by OPMC.
 - i. Said supervising physician shall submit to OPMC quarterly reports regarding the quality of my practice, any unexplained absences from work and certifying my compliance or detailing my failure to comply with each condition imposed.
 - ii. Said supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.
- f. I will continue in treatment with a health care professional, proposed by me and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
 - i. My treating health care professional or program shall submit to OPMC quarterly reports certifying that I am complying with the treatment.
 - ii. Said treating health care professional shall

report to OPMC immediately if I am noncompliant with my treatment plan or if I demonstrate any significant pattern of absences.

- iii. Said treating health care professional shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgement provided by OPMC.

6. I agree that the terms set out in paragraph 5 shall be the minimum probation terms, related to my fitness to practice, to be imposed on my practice upon restoration of my license, and that other terms may be added by the Committee at the time of license restoration, and that the costs of complying with all such terms will be my responsibility. I understand that any failure by me to comply with the conditions imposed upon my practice at the time of license restoration, may result in disciplinary action being brought against me charging professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law Section 6530(29) (McKinney Supp. 1998). That section defines professional misconduct to include "violating any... condition... imposed on the licensee pursuant to section two hundred thirty of the public health law."

7. I agree that upon any denial of license restoration made by the Committee, I shall not again request convening of a Committee until a minimum period of nine months has elapsed since such denial.

8. I agree that in addition to the terms set out in paragraph 5 and any other terms imposed by the Committee upon restoration of my license, I shall also be subject to the following standard terms of probation:

- a. I shall conduct myself in all ways in a manner befitting my professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by my profession.
- b. I 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.

- c. I 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. I shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- d. 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].
- e. The period of probation shall be tolled during periods in which I am not engaged in active practice as a physician assistant in New York State. I shall notify the Director of OPMC, in writing, if I am not currently engaged in or intend to leave active practice 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. The tolling provision set forth in this paragraph may be waived by the Director of the OPMC, in the Director's discretion.
- f. My 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 me and my staff at practice locations or OPMC offices.
- g. I 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.

- h. I shall comply with all terms, conditions, restrictions, limitations and penalties to which I am subject pursuant to the Order and I 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 me as may be authorized pursuant to the law.

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

IN THE MATTER
OF
ANDREW SCHWARTZ, R.P.A..

CONSENT
ORDER

Upon the proposed agreement of ANDREW SCHWARTZ, 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: June 8/1998


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