



New York State Board for Professional Medical Conduct

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

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
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NYS Department of Health*

Dennis P. Whalen
*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

February 4, 2003

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Malcolm H. Schvey, M.D.
1161 York Avenue
New York, NY 10021

RE: License No. 081565

Dear Dr. Schvey:

Enclosed please find Order #BPMC 03-24 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect February 4, 2003.

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: Wilfred T. Friedman, P.C.
Friedman and Mahdavian, P.C.
36 West 44th Street, Suite 1205
New York, NY 10036

**IN THE MATTER
OF
MALCOLM H. SCHVEY, M.D.**

**CONSENT
ORDER**

BPMC No. 03-24

Upon the application of (Respondent) MALCOLM H. SCHVEY, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

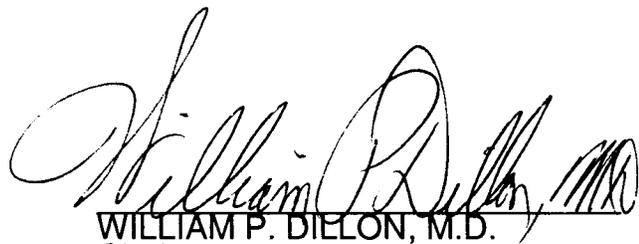
ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this 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.

DATED: 1/30/03



WILLIAM P. DILLON, M.D.
Chair
State Board for Professional Medical Conduct

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

**IN THE MATTER
OF
MALCOLM H. SCHVEY, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

MALCOLM H. SCHVEY, M.D., representing that all of the following statements are true, deposes and says:

That on or about September 22, 1958, I was licensed to practice as a physician in the State of New York, and issued License No. 081565 by the New York State Education Department.

My current address is 1161 York Avenue, New York, N.Y. 10021, 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 has charged me with two specifications of professional misconduct.

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

I cannot successfully defend against at least one of the acts of misconduct alleged in the specifications of misconduct against me, in full satisfaction of the charges against me, and agree to the following penalty:

My license to practice medicine shall be limited, pursuant to §230-a of the Public Health Law, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury deformity, or physical condition. I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

- That Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC within 30 days thereafter; and
- That Respondent shall, within 15 days of the effective date of this Order, return any and all official New York State prescriptions to the Bureau of Controlled Substances and shall surrender Respondent's Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration. Upon issuance of this Order, Respondent shall immediately and properly dispose of all controlled substances obtained using his DEA controlled substance privileges and/or his New York State official prescription forms by surrendering all such controlled substances to the New York State Department of Health. Further, within 30 days of returning said prescriptions, surrendering said registration, and properly disposing of all controlled substances obtained using his DEA controlled substance privileges and/or his New York State official prescription forms, Respondent shall provide documentary proof of such transaction(s) to the Director of OPMC; and

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

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

Respondent shall comply with all conditions set forth in Exhibit "B" ("Guidelines for Closing a Medical Practice") which is attached.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education 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 the Public 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 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.

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 ask that the Board adopt this Consent Agreement.

DATED January 16, 2003


MALCOLM H. SCHVEY, M.D.
RESPONDENT

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

DATE:

January 16, 2003


WILFRED T. FRIEDMAN, ESQ.
Attorney for Respondent

DATE:

January 21, 2003


MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE:

January 28, 2003


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
MALCOLM H. SCHVEY, M.D.

STATEMENT
OF
CHARGES

MALCOLM H. SCHVEY, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 22, 1958, by the issuance of license number 081565 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent has inappropriately prescribed and/or dispensed controlled substances for Patient A and for himself on repeated occasions.
- B. Respondent has practiced medicine while impaired by physical disability.

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) 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. Paragraph A.

SECOND SPECIFICATION
PRACTICING WHILE IMPAIRED

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(7) by practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability as alleged in the facts of the following:

2. Paragraph B.

DATED: January 27, 2003
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE

1. Respondent shall immediately cease and desist from engaging in the practice of medicine in accordance with the terms of the Order. In addition, Respondent shall refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.
2. Respondent shall have delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299 his current biennial registration within thirty (30) days of the effective date of the Order.
3. Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC within 30 days thereafter.
4. Respondent shall make arrangements for the transfer and maintenance of the medical records of his patients. Within thirty days of the effective date of the Order, Respondent shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after the patient reaches the age of majority whichever time period is longer. Records shall be maintained in a safe and secure place which is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient or and/or his or her representative requests a copy of the patient's medical record or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of their inability to pay.
5. In the event that Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall within fifteen (15) days advise the DEA in writing of the licensure action and shall surrender his DEA controlled substance privileges to the DEA. Respondent shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 to the DEA. Upon issuance of this Order, Respondent shall immediately and properly dispose of all controlled substances obtained using his DEA controlled substance privileges by surrendering all such controlled substances to the New York State Department of Health.
6. Respondent shall within fifteen (15) days return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall cause all prescription pads bearing his name to be destroyed. Upon issuance of this Order, Respondent shall immediately and properly dispose of all controlled substances obtained using his New York State official prescription forms by surrendering all such controlled substances to the New York State Department of Health.
7. Respondent shall not share, occupy or use office space in which another licensee provides health care services. Respondent shall cause all signs to be removed within fifteen (15) days and stop all advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings by which his eligibility to practice is represented.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered by himself or others while barred from engaging in the practice of medicine. Respondent may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and if his license is revoked, surrendered or suspended for a term of six months or more under the terms of this Order, Respondent shall divest himself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.

10. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in section 230-a of the Public Health Law, which includes fines of up to \$10,000 for each specification of charges of which the Respondent is found guilty and may include revocation of a suspended license.