



**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.  
Commissioner  
NYS Department of Health

Dennis P. Whalen  
Executive Deputy Commissioner  
NYS Department of Health

Dennis J. Graziano, Director  
Office of Professional Medical Conduct

*Public*

Kendrick A. Sears, M.D.  
Chairman

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

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

December 18, 2006

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Sholom Gootzeit, D.O.  
42 Lakeside Drive  
New Rochelle, New York 10801

RE: License No. 193515

Dear Dr. Gootzeit:

Enclosed is a copy of Order #BPMC 06-290 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect December 25, 2006.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this 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

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management  
New York State Department of Health  
Corning Tower, Room 1258  
Empire State Plaza  
Albany, New York 12237

Sincerely,

A handwritten signature in black ink, appearing to read "Ansel R. Marks". The signature is fluid and cursive, with a large initial "A" and "M".

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

cc: Jay Goldberg, Esq.  
Jay Goldberg, P.C.  
250 Park Avenue, 20th Floor  
New York, NY 10177

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

IN THE MATTER  
OF  
Sholom Gootzeit, D.O.

CONSENT  
ORDER

BPMC No. 06-290

Upon the application of (Respondent) Sholom Gootzeit, D.O., 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: 12-18-06

  
KENDRICK A. SEARS, 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  
Sholom Gootzeit, D.O.**

CONSENT  
AGREEMENT  
AND  
ORDER

Sholom Gootzeit, D.O., representing that all of the following statements are true, deposes and says:

That on or about August 26, 1993, I was licensed to practice as a physician in the State of New York, and issued License No. 193515 by the New York State Education Department.

My current address is 42 Lakeside Drive, New Rochelle, N.Y. 10801, 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 ten 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 assert that I cannot successfully defend against at least one the acts of misconduct alleged, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for 36 months, with the first 12 months to be served as a period of actual suspension and the remaining 24 months stayed.

Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on

probation for 36 months, said period to commence at the conclusion of the period of the 12 month period of active license suspension, subject to the terms set forth in attached Exhibit "B."

I shall be subject to a Condition that I comply with attached Exhibit "C," which conditions apply to a suspension of 6 Months or More.

Pursuant to N.Y. Pub. Health Law § 230-a(3), my license to practice medicine in New York State shall be limited to preclude me, either individually or through a professional corporation, from evaluating, treating or billing patients whose services are reimbursed through no-fault insurance and through worker's compensation.

Pursuant to N.Y. Pub. Health Law § 230-a(3), my license to practice medicine in New York State shall be limited to preclude me from performing and/or interpreting electrodiagnostic nerve and muscle studies until such time as I pass a course of retraining approved by the Director of the Office of Professional Medical. Such retraining shall include, at a minimum, at least 25 category 1 credits in an on-line course offering a comprehensive review of electrodiagnosis and clinical neurophysiology and at least 50 category 1 credits of in person attendance at an intensive review course covering basic and advanced techniques in electrodiagnostic medicine.

Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of \$75,000, to be paid in three installments: 1) The first installment of \$25,000.00 to be paid within

six months of the effective date of this order; 2) The second installment of \$25,000.00 to be paid within twelve months of the effective date of this order; and 3) The third installment of \$25,000.00 to be paid within eighteen months of the effective date of this order. Payments must be submitted to:

Bureau of Accounts Management  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 1245  
Albany, New York 12237

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) 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 30 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 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.

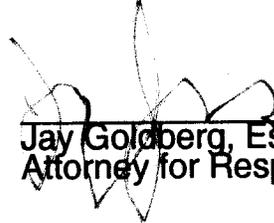
I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 11-30-06

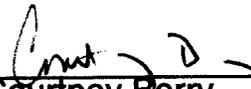
  
\_\_\_\_\_  
Sholom Gootzeit, D.O.  
Respondent

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

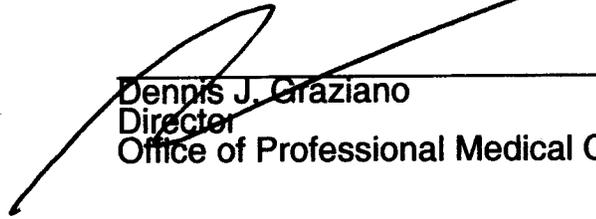
DATE: \_\_\_\_\_

  
\_\_\_\_\_  
Jay Goldberg, Esq.  
Attorney for Respondent

DATE: 12/6/06

  
\_\_\_\_\_  
Courtney Berry  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 12/14/06

  
\_\_\_\_\_  
Dennis J. Graziano  
Director  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
Sholom Gootzeit, D.O.

STATEMENT  
OF  
CHARGES

Sholom Gootzeit, D.O., the Respondent, was authorized to practice medicine in New York State on or about August 26, 1993, by the issuance of license number 193515 by the New York State Education Department. Respondent treated the patients, referred to below by letter(s), at his medical office(s) located in Brooklyn N.Y. Each of these patients is a "no-fault" insurance patient and is identified in Appendix A, attached.

**FACTUAL ALLEGATIONS**

- A. From in or about August 1998 through in or about October, 1999, Respondent, a physiatrist, ordered, performed and interpreted nerve conduction (NCV) and electromyographic (EMG) studies for Patients A1, A2 and A3. These studies of both upper and lower extremities were purportedly performed at physical rehabilitation centers in Brooklyn, N.Y.
1. Respondent failed to perform complete electrodiagnostic examinations, identify abnormal findings and note abnormal findings in the records and reports of these studies.
  2. Respondent prepared and submitted the reports of the above studies to insurance companies with claims for reimbursement, knowing that at least two of these NCV studies were fabricated.
- B. From in or about November, 1998 through in or about July, 1999, Respondent,

a physiatrist, ordered, performed and interpreted nerve conduction (NCV) and electromyographic (EMG) studies for Patients B1, and B2. These studies of both upper and lower extremities were purportedly performed at physical rehabilitation centers in Brooklyn, N.Y.

1. Respondent failed to perform complete electrodiagnostic examinations, identify abnormal findings and note abnormal findings in the records and reports of these studies.
2. Respondent prepared and submitted the reports of the above studies to insurance companies with claims for reimbursement, knowing that at least one of these NCV studies were fabricated.

C. From in or about August, 1998 through in or about March, 1999, Respondent, a physiatrist, ordered, performed and interpreted nerve conduction (NCV) and electromyographic (EMG) studies for Patients C1 and C2. These studies of both upper and lower extremities were purportedly performed at physical rehabilitation centers in Brooklyn, N.Y.

1. Respondent failed to perform complete electrodiagnostic examinations, identify abnormal findings and note abnormal findings in the records and reports of these studies.
2. Respondent prepared and submitted the reports of the above studies to insurance companies with claims for reimbursement, knowing that at least one of these NCV studies was fabricated.

## **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. Paragraphs A and A.1., B and B.1., and/or C and C.1.

### **SECOND THROUGH FIFTH SPECIFICATIONS**

#### **FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

2. Paragraphs A and A.2.
3. B and B.2.
4. C and C.2.

### **SIXTH THROUGH TENTH SPECIFICATIONS**

#### **FAILING TO MAINTAIN RECORDS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record that accurately reflects the care and treatment of the patient, as alleged in the facts of:

5. Paragraphs A and at least one of its subparagraphs.
6. Paragraphs B and at least one of its subparagraphs.
7. Paragraphs C and at least one of its subparagraphs.

DATE:

~~December~~  
November 6, 2006  
New York, New York



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Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

## EXHIBIT "B"

### **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) 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; 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(s) 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]. Failure to pay the fine shall be construed as a violation of probation.
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.

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 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.
9. Respondent shall enroll in and complete a continuing education program in the area(s) of ethics. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.
10. Payment of the fine imposed is also a term of probation. The fine is payable in full within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 1245  
Albany, New York 12237

#### PRACTICE MONITOR

11. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
  - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
  - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
  - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

## EXHIBIT "C"

### **GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more) OF A MEDICAL LICENSE**

1. Respondent shall immediately cease the practice of medicine in compliance with the terms of the Consent Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within 15 days of the Consent Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty days of the Consent Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty days of the Consent Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six years after the last date of service, and, for minors, 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 that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed 75 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 inability to pay.
5. Within 15 days of the Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within 15 days of the Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.
7. Within 15 days of the Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice

medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.

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 practicing medicine.
9. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date. If Respondent dissolves a professional service corporation pursuant to this Order, the dissolution of the professional service corporation shall not affect any remedy available to or against such corporation, its directors, officers or shareholders for any right or claim existing before such dissolution.
10. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six months or more pursuant to this Order, Respondent shall, within ninety days of the Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety days of the Order's effective date.
11. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four years, under § 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under § 230-a of the Public Health Law.