



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*

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*Executive Deputy Commissioner
NYS Department of Health*

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Office of Professional Medical Conduct

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Vice Chair

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

Public

December 19, 2006

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Andrew James Dowd, M.D.
19 Seacliff Place
Miller Place, New York 11764

RE: License No. 161299

Dear Dr. Dowd:

Enclosed is a copy of Order #BPMC 06-298 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect December 26, 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: Andrew Scher, Esq.
222 Bloomingdale Road
Suite 311
White Plains, New York 10605

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

IN THE MATTER
OF
ANDREW JAMES DOWD, M.D.

CONSENT
ORDER

BPMC 06-298

Upon the application of (Respondent) ANDREW JAMES DOWD, 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: 12-19-2006


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
ANDREW JAMES DOWD, M.D.

CONSENT
AGREEMENT
AND
ORDER

ANDREW JAMES DOWD, M.D., representing that all of the following statements are true, deposes and says:

That on or about January 28, 1985, I was licensed to practice as a physician in the State of New York, and issued License No. 161299 by the New York State Education Department.

My current address is 19 Seacliff Lane, Miller Place, New York 11764, 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 twenty one 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 state that I cannot successfully defend against at least one of the acts of misconduct alleged, in full satisfaction of the charges against me, and agree to the following penalty:

- Pursuant to New York Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for 36 months with such suspension to be entirely stayed.
- Pursuant to New York Pub. Health Law § 230-a(9), I shall be placed on probation for 36 months, subject to the terms set forth in attached

Exhibit "B." Upon my successful completion of two years of the period of Probation, I may petition the Director for an early release therefrom and the Director shall exercise reasonable discretion in deciding whether to grant my petition.

- Pursuant to N.Y. Pub. Health Law § 230-a(3), my license to practice medicine in New York State shall be limited to preclude the performance and/or reporting of Independent Medical Examinations.
- Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of \$30,000, to be paid in three installments as follows:
 1. I shall be required \$10,000 no later than 30 days after the effective date of this Order.
 2. I shall be required \$10,000 no later than 26 weeks after the effective date of this Order.
 3. I shall be required \$10,000 no later than 52 weeks after the effective date of this Order.

Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Coming 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.

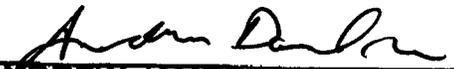
I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the 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 11/25/06


ANDREW JAMES DOWD, M.D.
RESPONDENT

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

DATE: 11/30/06


ANTHONY Z. SCHER, ESQ.
Attorney for Respondent

DATE: 12/5/06


DIANNE ABELOFF
ASSOCIATE COUNSEL
Bureau of Professional Medical Conduct

DATE: December 13, 2006


DENNIS J. GRAZIANO
Director
Office 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 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. Payment of the fine as imposed by the Consent Order is also a term of probation.

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

7. 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.

8. 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.
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.

PRACTICE MONITOR

10. 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 primary medical practice on a random unannounced basis at least monthly, and at his other locations on a random unannounced basis at least once a quarter. The monitor shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. These records will be reviewed at the primary office location, but will also include a review of the records of patients seen at all of the practice locations. 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.
11. Licensee shall enroll, or continue enrollment, in the Committee for Physicians' Health (CPH) and shall engage in a contract with CPH that fully

describes the terms, conditions and duration of a recovery program. Licensee shall comply with the contract. Licensee shall provide a written authorization for CPH to provide the Director of OPMC with any/all information or documentation requested by OPMC to determine whether Licensee is in compliance with the contract and with this Order, including full access to the records maintained by CPH will respect to Licensee.

- a. Licensee shall cause CPH to report to OPMC promptly if Licensee refuses to comply with the contract, refuses to submit to treatment or if Licensee's impairment is not substantially alleviated by treatment.
 - b. Licensee shall cause CPH to report immediately to OPMC if Licensee is regarded at any time to be an imminent danger to the public.
12. Respondent shall enroll in and complete a continuing education program in the area 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.
 13. 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.

IN THE MATTER
OF
ANDREW JAMES DOWD, M.D.

STATEMENT
OF
CHARGES

ANDREW JAMES DOWD, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 28, 1985, by the issuance of license number 161299 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about November 5, 1999, Respondent was convicted of violating N.Y. VTL §1192.3, operating a motor vehicle under the influence of drugs or alcohol, a misdemeanor and VTL § 511.2A(ii), aggravated unlicensed operation of a motor vehicle, also a misdemeanor.
- B. Respondent, in his New York State license registration application for the period 10/01/01-9/30/03, in response to the question: "[S]ince you last registered, have you been convicted of any crime (felony or misdemeanor) in any state or country or have you been charged with any crime the disposition of which was other than by acquittal or dismissal..." knowingly and with intent to deceive, failed to disclose that he was convicted of a misdemeanor in New York State in November 1999, as set forth in Paragraph A, above.
- C. Respondent, in his 2001 appointment application to Mount Sinai Hospital, Queens Campus, in response to the question: "[H]ave you been convicted of a crime," failed to disclose that he was convicted of a misdemeanor in New

Exhibit "A"

York State in November 1999, as set forth in Paragraph A, above.

1. Respondent did this knowingly and with intent to deceive.

D. Respondent in his 2002 reappointment application to St. Catherine of Siena Medical Center, Smithtown, NY, in response to the question: “[H]ave you been convicted of a crime which has not been expunged or sealed by the court,” failed to disclose that he was convicted of a misdemeanor in New York State in November 1999 as set forth in Paragraph A, above.

1. Respondent did this knowingly and with intent to deceive.

E. Respondent, in his 2002 reappointment application to Mather Memorial Hospital and St. Charles Hospital and Rehabilitation Center, in response to the question: “[H]ave you had any convictions for crime,” failed to disclose that he was convicted of a misdemeanor in New York State in November 1999 as set forth in Paragraph A, above.

1. Respondent did this knowingly and with intent to deceive.

F. From on or about August 29, 2005, through September 16, 2005, at Mount Sinai Hospital, Queens campus, Respondent treated Patient A (Appendix contains identity of the patients) for a left wrist fracture. Respondent’s conduct deviated from accepted medical standards, in that:

1. On or about September 1, 2005, Respondent failed to recognize the unstable nature of Patient A’s wrist fracture and treat it appropriately.
2. On and after September 1, 2005, Respondent failed to appropriately interpret the x-rays of Patient A’s wrist.
3. Respondent failed to review and compare the series of x-rays of

the patient's wrist.

4. Respondent failed to discuss and or offer Patient A surgical correction of her wrist fracture.
5. Respondent failed to maintain a record that accurately reflects the care and treatment he rendered to Patient A.

G. On or about November 13, 2003, Respondent performed an independent medical examination (IME) of Patient B at Respondent's Staten Island office. Respondent's conduct deviated from accepted medical standards, in that:

1. Respondent knowingly and intentionally prepared and submitted a report of his examination of Patient B, which he knew to be false in that it did not accurately report the actual nature and scope of his evaluation of Patient B.
 - a. Respondent intended to mislead the recipient of the report.

H. On or about November 13, 2003, Respondent performed an independent medical examination (IME) of Patient C as at Respondent's Staten Island office. Respondent's conduct deviated from accepted medical standards, in that:

1. Respondent knowingly and intentionally prepared and submitted a report of his examination of Patient C, which he knew to be false in that it did not accurately report the actual nature and scope of his evaluation of Patient C.
 - a. Respondent intended to mislead the recipient of the report.

- I. On or about September 8, 2003, Respondent performed an IME of Patient D at Respondent's Port Jefferson office. Respondent's conduct deviated from accepted medical standards, in that:
 1. Respondent knowingly and intentionally prepared and submitted a report of his examination of Patient D, which he knew to be false in that it did not accurately report the actual nature and scope of his evaluation of Patient D.
 - a. Respondent intended to mislead the recipient of the report.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

1. Paragraph F and its subparagraphs.

SECOND 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;

2. Paragraph F and its subparagraphs.

THIRD SPECIFICATION
CRIMINAL CONVICTION (N.Y.S.)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:

3. Paragraph A.

FOURTH THROUGH NINTH 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:

4. Paragraph A and B;
5. Paragraph A, C, and C1;
6. Paragraph A, D, and D1;
7. Paragraph A, E, and E1;
8. Paragraph G, G1, and G1a;
9. Paragraph H, H1, and H1a;
10. Paragraph I, I1, and I1a.

ELEVENTH THROUGH THIRTEENTH SPECIFICATIONS
VIOLATION OF § TWENTY-EIGHT HUNDRED FIVE-K
OF THE PUBLIC HEALTH LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(14) by violating section twenty-eight hundred five-k of the Public Health Law, as alleged in the facts of:

11. Paragraph A and C;
12. Paragraph A and D;
13. Paragraph A and E.

FOURTEENTH THROUGH TWENTIETH SPECIFICATIONS

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

14. The facts in Paragraph A and B;
15. The facts in Paragraph A and C;
16. The facts in Paragraph A and D;
17. The facts in Paragraph A and E;
18. The facts in Paragraph G and G1;
19. The facts in Paragraph H and H1;
20. The facts in Paragraph I and I1.

TWENTY-FIRST SPECIFICATION

FAILURE 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 for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

21. Paragraph F and F (5).

DATE: October 3rd, 2006
New York, New York

A handwritten signature in black ink, appearing to read "Roy Nemerson", written over a horizontal line.

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct