New York State Board for Professional Medical Conduct
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Richard F. Daines, M.D.
Commissioner
NYS Department of Health
James W. Clyne, Jr.
Executive Deputy Commissioner
Keith W. Servis, Director
Office of Professional Medical Conduct

Public

Kendrick A. Sears, M.D.
Chair
Carmela Torrelli
Vice Chair
Katherine A. Hawkins, M.D., J.D.
Executive Secretary

December 1, 2010

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Edmund E. Kaplan, M.D.
907 Fifth Avenue, Suite 1E
New York, NY 10021

Re: License No. 191780

Dear Dr. Kaplan:

Enclosed is a copy of BPMC #10-260 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect December 8, 2010.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

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

IN THE MATTER

OF

EDMUND KAPLAN, M.D.

CONSENT

ORDER

BPMC No. #10-260

Upon the application of (Respondent) EDMUND KAPLAN, 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: 12/1/10

REDACTED

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
EDMUND KAPLAN, M.D.

CONSENT
AGREEMENT
AND
ORDER

EDMUND KAPLAN, M.D., represents that all of the following statements are true:

That on or about March 24, 1993, I was licensed to practice as a physician in the State of New York, and issued License No. 191780 by the New York State Education Department.

My current address is 907 Fifth Avenue, Suite 1E, New York, New York 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 (Board) has charged me with nine 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 agree not to contest the Statement of Charges, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(3), effective close of business, December 31, 2010, my license to practice medicine in New York State shall be limited to preclude the:

- practice of obstetrics;
- practice of surgical gynecology; and
- providing of post-surgical care or surgical follow-up of any patient; and

to permit only the practice office-based nonsurgical gynecology. Pursuant to Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of 3 years, subject to the terms set forth in attached Exhibit "B.".

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 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 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 11/19/10.

REDACTED

EDMUND KAPLAN, M.D.
RESPONDENT

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

DATE: 11/19/16

REDACTED

DIANNE ABELOFF
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/24/10

REDACTED

KEITH W. SERVIS
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. 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 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.

PRACTICE MONITOR

10. Within thirty days of the Consent Order's effective date, 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. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

    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.

11. Respondent shall enroll in and complete a continuing education program in an area specified by the Ofice of Professional Medical Conduct. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first 90 days of the probation period.

12. 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.

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

IN THE MATTER

OF

EDMUND KAPLAN, M.D.

STATEMENT

OF

CHARGES

EDMUND KAPLAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 24, 1993, by the issuance of license number 191780 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. From in or about June 2002 through November 2004, Respondent treated Patient A for complaints of post-menopausal bleeding and thickened endometrium. (The identity of the patients is contained in the Appendix). Respondent's care and treatment of Patient A deviated from accepted medical standards in that:

1. Respondent, over a period of 28 months, performed seven diagnostic procedures for post menopausal bleeding. During this period of time, Respondent failed to adequately follow up, evaluate and identify the range of etiologies of Patient A's post menopausal bleeding;

2. Respondent failed to adequately explain potential etiologies of the post menopausal bleeding to Patient A and to provide her with alternatives to the biopsies and hysteroscopies to evaluate and treat her bleeding;

EXHIBIT A

3. Failed to maintain a record which accurately reflected his care and treatment of Patient A.

B. From in or about May 2005 through in or about July 2007, Respondent treated Patient B. Respondent's care and treatment of Patient B deviated from accepted medical standards in that:

1. On or about July 19, 2007, exposed Patient B to unnecessary risks when he performed a hysterectomy with the assistance of an insufficiently trained assistant, a third year medical student;

2. During the course of the July hysterectomy, Respondent lacerated Patient B's bladder and failed to obtain an intraoperative consultation from a urologist.

3. Respondent failed to mitigate the risk of development of a fistula in that he failed to appropriately manage the bladder injury
   a. intra-operatively; and
   b. post-operatively management of bladder injury contributed to the development of Patient B's fistula;

4. Failed to maintain a record which accurately reflected his care and treatment of Patient B.

C. From in or about October 6, 2006 through in or about October 25, 2006, Respondent treated Patient C for a large pelvic mass. Respondent's care

and treatment of Patient C deviated form accepted medical standards, in that:

1. On or about October 12, 2005, Respondent failed to appropriately address the concurrent morbidities of an infection and elevated white blood count which may have necessitated an alternative treatment to the planned laparoscopy;

2. Failed to administer appropriate post-operative antibiotics;

3. Failed to appropriately monitor the patient post-operatively;

4. Failed to appropriately manage Patient C's tubo ovarian abscess.

5. Failed to maintain a record which accurately reflected his care and treatment of Patient C.

SPECIFICATION OF CHARGES

FIRST THROUGH THIRD 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 A and its subparagraphs
2. Paragraph B and its subparagraphs

3. Paragraph C and its subparagraphs

FOURTH 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:

4. Paragraph A and its subparagraphs; Paragraph B and its subparagraphs; and/or Paragraph C and its subparagraphs.

FIFTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

5. Paragraph A and its subparagraphs; Paragraph B and its subparagraphs; and/or Paragraphs C and its subparagraphs.

SIXTH THROUGH NINTH 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:

6. Paragraph A and A(3)

7. Paragraph B and B(4)

8. Paragraph C and C(5).

DATE: September 20, 2010
New York, New York

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct