



New York State Board for Professional Medical Conduct

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

Dennis P. Whalen
Executive Deputy Commissioner of Health
Anne F. Saile, Director
Office of Professional Medical Conduct
William J. Comiskey, Chief Counsel
Bureau of Professional Medical Conduct

William P. Dillon, M.D.
Chair
Denise M. Bolan, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

December 14, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Harvey Horn, M.D.
419 Robinson Avenue
Newburgh, New York 12550

RE: License No. 142192

Dear Dr. Horn:

Enclosed please find Order #BPMC 98-301 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **December 14, 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 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: Daniel M. Shapiro, Esq.
Shapiro, Uchman & Myers, P.C.
220 Old Country Road
Mineola, New York 11501

Wayne E. Olinzock, Esq.

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

IN THE MATTER
OF
HARVEY HORN, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-301

HARVEY HORN, M.D., (Respondent) says:

That on or about May 23, 1980, I was licensed to practice as a physician in the State of New York, having been issued License No. 142192 by the New York State Education Department.

My current address is 419 Robinson Avenue, Newburgh, New York 12550 , and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with five specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I do not contest the Second, Fourth and Fifth Specifications as charged in Exhibit "A", in full satisfaction of the charges against me. I hereby agree to the following penalty:

a censure and reprimand;

a two year term of probation during which time I must fully comply with the Terms of Probation as set forth in Exhibit "B" including a practice monitor for the duration of probation.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's 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; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent.

Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order.

Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC.

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 same. I agree that such 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 me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

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 a hearing 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.

AFFIRMED:

DATED 11/16/98

Winfred Swenson

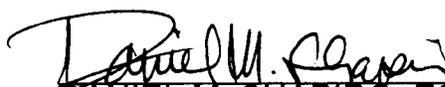
Harvey Horn

HARVEY HORN, M.D.
RESPONDENT

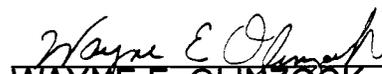
WINFRED SWENSON
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-1258
QUALIFIED IN Orange COUNTY
MY COMMISSION EXPIRES FEB. 28, 1999

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

DATE: November 17, 1998


DANIEL M. SHAPIRO, ESQ.
Attorney for Respondent

DATE: November 19, 1998


WAYNE E. OLINZOCK, ESQ.
Assistant counsel
Bureau of Professional
Medical Conduct

DATE: December 5, 1998


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
HARVEY HORN, M.D.

CONSENT
ORDER

Upon the proposed agreement of HARVEY HORN, M.D. (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: 12/18/98


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

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

-----X

IN THE MATTER : STATEMENT
OF : OF
HARVEY HORN, M.D. : CHARGES

-----X

HARVEY HORN, M.D., the Respondent, was authorized to practice medicine in New York State on May 23, 1980 by the issuance of license number 142192 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (patients are identified in the Appendix) at various times from approximately June 25, 1996 through approximately July 2, 1996 at the Cornwall Hospital, Cornwall, New York. Respondent's care of Patient A did not meet accepted standards of care, in that:

1. Respondent failed to conduct an adequate pre-operative evaluation of Patient A.
2. Respondent performed an open biopsy of Patient A's right breast without adequate medical justification.
3. Respondent failed to maintain an adequate record of his evaluation and treatment of Patient A specified in Paragraphs A.1 and/or A.2.

B. Respondent provided medical care and treatment to Patient B from approximately February 3, 1992 through approximately February 21, 1992, at his office and at the Cornwall Hospital, Cornwall, New York. Respondent's care and

treatment of Patient B did not meet accepted standards of care in that:

1. Respondent failed to perform an adequate pre-operative evaluation of Patient B.
2. Respondent failed to implement a medically appropriate plan of care to treat Patient B's diverticulitis.
3. Respondent prescribed inappropriate antibiotic therapy to treat Patient B's diverticulitis.
4. Respondent inappropriately ordered magnesium citrate and/or Fleets enemas for Patient B.
5. Respondent failed to perform surgery for Patient B's diverticulitis in a timely manner.
6. Respondent performed an inappropriate surgical procedure to treat Patient B's sigmoid colon.
7. Respondent failed to appropriately respond to Patient B's increasing blood urea nitrogen levels.
8. Respondent failed to appropriately and timely diagnose and/or treat Patient B's indications of post-operative intraperitoneal sepsis.
9. Respondent failed to maintain an adequate record of his evaluation and treatment of Patient B specified in Paragraphs B.1, B.2, B.3, B.4, B.5, B.6, B.7 and/or B.8.

FIRST SPECIFICATION

PRACTICING WITH GROSS NEGLIGENCE ON A PARTICULAR OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(4) by reason of his practicing the profession of medicine with gross negligence on a particular occasion, in that Petitioner charges:

1. The facts in Paragraphs B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8 and/or B and B.9.

SECOND SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(3) by reason of his practicing the profession of medicine with negligence on more than one occasion, in that Petitioner charges that Respondent committed two or more of the following:

2. The facts in Paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8 and/or B and B.9.

THIRD SPECIFICATION

PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(5) by reason of his practicing the profession with incompetence on more than one occasion, in that Petitioner charges Respondent committed two or more of the following:

3. The facts in Paragraphs B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8 and/or B and B.9.

FOURTH AND FIFTH SPECIFICATIONS

INADEQUATE RECORD KEEPING

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(32) by reason of his having failed to maintain a record for each patient which accurately reflects the evaluation and treatment of each patient in that Petitioner charges:

4. The facts in Paragraphs A and A.3.
5. The facts in Paragraphs B and B.9.

DATED: October 5, 1998
Albany, New York


WILLIAM J. COMISKEY
Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent 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.
3. 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].
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine 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.
5. Respondent's 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 Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent 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.
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and 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 Respondent as may be authorized pursuant to the law.

8. Respondent shall enroll in and complete continuing education programs in medical record keeping, the diagnosis and treatment of breast diseases and the diagnosis and treatment of colon and rectal disorders to be equivalent to at least 50 credit hours total of Continuing Medical Education per year, over and above the recommended minimum standards set by the American Board of Surgery and the American Board of Colon and Rectal Surgery. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the period of probation or as otherwise specified in the Order.
9. 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 of no less than twenty 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.